

## GOVERNMENT OF THE DISTRICT OF COLUMBIA

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## ZONING COMMISSION

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PUBLIC MEETING  
1203TH MEETING SESSION (5TH OF 2006)

+ + + + +

MONDAY

FEBRUARY 13, 2006

The Special Public Meeting of the District of Columbia Zoning Commission convened in Room 220 South, at 441 4<sup>th</sup> Street, Northwest, Washington, D.C., 20001, at 6:30 p.m., Carol Mitten, Chairperson, presiding.

## ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice-Chairperson
GREGORY JEFFRIES	Commissioner
JOHN PARSONS	Commissioner (NPS)
MICHAEL G. TURNBULL	Commissioner (AOC)

## OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN	Acting Secretary (ZC)
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## OFFICE OF PLANNING STAFF PRESENT:

ELLEN MCCARTHY	Interim Director
MAXINE BROWN-ROBERTS	
STEVE COCHRAN	
TRAVIS PARKER	
JENNIFER STEINGASSER	
KAREN THOMAS	

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OFFICE OF THE ATTORNEY GENERAL STAFF PRESENT:

ALAN BERGSTEIN, ESQ.

MARY NAGELHOUT, ESQ.

JACOB RITTIG, ESQ.

This transcript constitutes the minutes  
from the public meeting held on February 13, 2006.

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AGENDA ITEMPAGECALL TO ORDER:

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PRELIMINARY MATTERS:

Ms. Schellin (None) . . . . . 5

CONSENT CALENDAR:

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     VOTE: . . . . . 7  
 B. Z.C. Case No. 03-26A . . . . . 7  
     VOTE: . . . . . 10

HEARING ACTION:

A. Z.C. Case No. 06-06  
     Travis Parker . . . . . 10  
     VOTE . . . . . 39  
 B. Z.C. Case No. 06-05  
     Karen Thomas . . . . . 39  
     VOTE . . . . . 43  
     AMENDED VOTE . . . . . 45  
 C. Z.C. Case No. 06-07  
     Steven Mordfin . . . . . 45  
     VOTE . . . . . 59  
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     Jennifer Steingasser . . . . . 60

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 C. Z.C. Case No. 05-21 . . . . . 94  
     VOTE . . . . . 103  
 D. Z.C. Case No. 05-24 . . . . . 104  
     VOTE . . . . . 127

FINAL ACTION:

A. Z.C. Case No. 05-12 . . . . . 128  
     VOTE . . . . . 128  
  
 B. Z.C. Case No. 03-12A . . . . . 129  
     VOTE . . . . . 133

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P-R-O-C-E-E-D-I-N-G-S

6:30 p.m.

CHAIRPERSON MITTEN: Good evening ladies and gentlemen. This is a public meeting of the Zoning Commission of the District of Columbia for Monday, February 13, 2006. And my name is Carol Mitten. And joining me this evening are Vice Chairman, Anthony Hood, and Commissioners Michael Turnbull, John Parsons and Greg Jeffries.

Copies of our agenda are on the table by the door. And I would just remind everyone that we don't take any public testimony at our public meetings unless we invite someone forward specifically.

I'm just going to change one thing on the order on the agenda this evening; which is, under Hearing Action, the first case will be what is currently lettered B, which is Case No. 06-06, and then the second case will be the case the case that's currently lettered A, which will be 06-05.

And I will just ask everyone to turn off their beepers and cell phones, so as not to disrupt the meeting. Thank you.

Is there anything else, Ms. Schellin, before we dive in?

MS. SCHELLIN: No, Ma'am.

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1 CHAIRPERSON MITTEN: Okay. Then we'll  
2 turn first to the Consent Calendar item. The first  
3 case there is Case No. 04-04A. Ms. Schellin, is there  
4 anything else we need to know, other than the  
5 submission that we have?

6 MS. SCHELLIN: No, Ma'am.

7 CHAIRPERSON MITTEN: All right. What we  
8 have is a submission from the Applicant requesting  
9 that we modify condition no. 2 because of a problem  
10 with the lender, in that circumstance that having the  
11 degree of specificity that exists in condition no. 2  
12 now is problematic and that the proposed revised  
13 condition is on page 2 of the Applicant's letter.

14 What I would suggest is that -- I  
15 understand that they don't want to restrict it  
16 automatically, but what I would suggest is that we  
17 add, relative to what the Applicant is suggesting,  
18 because they're saying they can't rely on the HPAP  
19 funding. So, what I was going to suggest we add at  
20 the end is just to say that the Applicant shall seek  
21 HPAP funding in order to achieve the following  
22 affordability targets; and then list the affordability  
23 targets that they've asked to be removed. So It  
24 doesn't say they'll guarantee those. It just says  
25 they'll ask for the financing to achieve that; which

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1 I think is a fairly decent compromise.

2 COMMISSIONER TURNBULL: Is that a motion?

3 CHAIRPERSON MITTEN: I will move that.

4 COMMISSIONER PARSONS: Second.

5 CHAIRPERSON MITTEN: Any discussion? All  
6 those in favor, please say aye. Aye.

7 ALL: Aye.

8 CHAIRPERSON MITTEN: Any opposed? Ms.  
9 Schellin.

10 MS. SCHELLIN: Staff will record the vote  
11 five to zero to zero to approve Zoning Commission Case  
12 No. 04-04A, Commissioner Mitten moving; Commissioner  
13 Parsons seconding; Commissioners Jeffries, Hood, and  
14 Turnbull in favor.

15 CHAIRPERSON MITTEN: Thank you. And if  
16 you need the amended language, I have it here.

17 Second is a request for a minor  
18 modification that we had on our Consent Calendar at  
19 our last meeting. And we asked for a little bit of  
20 additional information. And I believe we got a letter  
21 that just had some new calculations in it today. And  
22 you'll see that the Applicant is proposing to take  
23 what was supposed to be an incremental payment, of  
24 which they've already made some; but they basically  
25 want to close out their obligation and, in doing that,

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1 they're discounting the outstanding payments to a  
2 current date with a percentage rate of six and one  
3 half percent.

4 So the question is do we want to allow the  
5 discounting to occur? Is six and one half percent the  
6 appropriate rate?

7 VICE-CHAIRPERSON HOOD: Madam Chair, I  
8 don't know if six and one half percent is the  
9 appropriate rate. Maybe we could -- I don't know who  
10 would be able to advise us on that. But I do think  
11 maybe a discount is ordered. But the issue with me  
12 is, is it six and one half percent.

13 CHAIRPERSON MITTEN: I think the notion  
14 would be is what they're forgoing, in terms of what  
15 they would -- if they kept that money in the bank,  
16 they could earn interest on it. And so, from that  
17 perspective, I think it's sort of commonly known that  
18 one can't earn six and one half percent interest in  
19 any kind of regular, safe, financial investment. So  
20 I don't know if anybody else wants to jump in on this.

21 COMMISSIONER PARSONS: You mean, you're  
22 suggesting four percent like more in line with what's  
23 going on in the marketplace?

24 CHAIRPERSON MITTEN: Well, we could do  
25 that or -- I mean, it's getting into some really fine

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1 tuning of a proffer that is very small in the scheme  
2 of things. So I would say that I wouldn't think it  
3 was inappropriate to just say that they need to pay  
4 the \$20,000, and not discount it. I understand the  
5 principle behind it. But when you start getting into  
6 what's the appropriate rate, I think you're getting  
7 down into something that's -- the discount becomes  
8 quite marginal. And they're not compelled to do it.  
9 They're not compelled to pay it off. They're just  
10 asking for the flexibility to pay it off.

11 VICE-CHAIRPERSON HOOD: I guess, what is  
12 the question, Madam Chair? I guess, obviously, you're  
13 not in agreement with the discount. So you're just  
14 saying leave it as it is, and it's up to them to pay  
15 it off then.

16 CHAIRPERSON MITTEN: Right. They can pay  
17 it off. I guess I would be in favor of just denying  
18 their request for a modification. They're certainly  
19 free to pay it off in total amount now.

20 MR. BERGSTEIN: Madam Chair, I believe, as  
21 I understand it, that this came to you because the  
22 Zoning Administrator thought a modification was  
23 necessary to allow an alternative lump sum. So --

24 CHAIRPERSON MITTEN: Okay.

25 MR. BERGSTEIN: -- what you could do is

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1 just strike the language that says discount to reflect  
2 early payment. And then that would satisfy the Zoning  
3 Administrator that they could, in the alternative, do  
4 a lump sum payment.

5 CHAIRPERSON MITTEN: Okay. Well then I  
6 would move that.

7 VICE-CHAIRPERSON HOOD: I'll second.

8 CHAIRPERSON MITTEN: Any further  
9 discussion? All those in favor, please say aye.

10 ALL: Aye.

11 CHAIRPERSON MITTEN: Those opposed, please  
12 say no. Ms. Schellin?

13 MS. SCHELLIN: Staff will record the vote  
14 five to zero to zero, to approve the modification as  
15 discussed on the dias in Case No. 03-26A; Commissioner  
16 Mitten moving; Commissioner Hood Seconding;  
17 Commissioners Jeffries, Parsons, and Turnbull in  
18 favor.

19 CHAIRPERSON MITTEN: Thank you. All right  
20 then, the next up is Hearing Action. And, as I said,  
21 we'll take up the Case No. 06-06 first; which is a  
22 proposed emergency text amendment regarding public  
23 schools. Mr. Parker?

24 MR. PARKER: Good evening, Madam Chair and  
25 members of the Commission. My name is Travis Parker

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1 with the Office of Planning.

2 As you are aware, the Congress has passed  
3 the Public Charter School Act, which amended the  
4 definition in the City Code of Public Schools to  
5 include charter schools. As of this date, the Zoning  
6 Regulations haven't been amended to reflect that  
7 change and this amendment would -- would do just that;  
8 change the Zoning Regulations to reflect charter  
9 schools as public schools in the District.

10 Inherent with that change is also language  
11 necessary to address the similarities and differences  
12 between charters and traditional public schools. As  
13 you are aware, traditional public schools go to the  
14 City Council for approval. And guidelines for schools  
15 have traditionally come through that process.

16 In equating public schools to charter  
17 schools, it's necessary to delineate development  
18 guidelines for schools in the residential zones that  
19 would otherwise come from Council oversight.

20 Further, this amendment would expand the  
21 public schools, including charter schools, throughout  
22 the District to include the CR, W, and SP districts,  
23 and add clarifying language that results from these  
24 changes.

25 OP has worked with the D.C. public schools

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1 and stake holders from there throughout the city over  
2 the past couple of months, to address these issues.  
3 And now, I'll briefly go over the specific changes  
4 requested.

5 The first is amendment of Section 199 to  
6 specifically include schools chartered by the D.C.  
7 Board of Education and the D.C. Public Charter School  
8 Board in the definition of public schools.

9 Second, we would change the matter of  
10 right uses in R-1, under public schools, to encourage  
11 co-location of public schools with other uses and the  
12 sharing of recreation space, including gymnasiums,  
13 playgrounds, fields, and etc.

14 The third change that we're proposing is  
15 reflected in page 3 of the report, in the chart, and  
16 deals with several areas of development regulations  
17 for public schools. The minimum lot area and minimum  
18 lot width would be amended in Section 401. The R-1  
19 districts would have a minimum lot area of 15,000  
20 square feet and the R-2 through R-5 districts of 9,000  
21 square feet.

22 The reason for the difference between the  
23 two; the R-1 districts are currently the only  
24 districts in the city that have no -- have no  
25 possibility for side lot line joining or always have

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1 a side yard. Every district from the R-2 up, has  
2 duplexes or row house options. And so those -- there  
3 is an inherent difference there between the districts.

4 As you'll note in the charts in the back  
5 of the report, we have information on every school  
6 that we've been able to locate; both public school and  
7 charter school in the District, in regards to lot  
8 area.

9 Every single D.C. public school in  
10 existence now is greater than half an acre in size and  
11 every charter school that's located in a residential  
12 district is greater than 9,000 square feet in size.  
13 So the effects of this change on existing schools  
14 should be nearly nothing, as far as making schools not  
15 conforming.

16 The minimum lot width proposed in  
17 residential districts is 120 feet. This is an attempt  
18 to address the drop off and pick up of students at  
19 these schools. We didn't feel it was appropriate to  
20 require schools to have drop off and pick up onsite  
21 because it's not always possible. But, by providing  
22 a minimum lot width of 120 feet, there is space in the  
23 front of schools for up to six cars to stop and have  
24 a school drop off loading zone.

25 Section 403, later in the chart, addresses

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1 maximum lot occupancy. Currently schools are limited  
2 to 60 percent. All uses in the districts R-1 through  
3 R-5B are limited to 60 percent, but schools are  
4 granted extra leeway above that when they meet certain  
5 requirements found in Section 403.

6 We're recommending to keep that for the R-  
7 1 and the R-5 districts, but R-2, R-3, and R-4 would  
8 cap that additional lot occupancy at 70 percent.

9 We're changing no -- nothing -- proposing  
10 no changes to the FAR in Section 402 and only minor  
11 changes to the maximum height in Section 400. You'll  
12 note that currently schools are allowed greater  
13 heights than the residential districts -- than the  
14 residential uses in the districts in which they sit.  
15 And, while they're allowed up to 60 in R-1 through R-  
16 2, R-3 and R-4 are currently allowed 90 foot schools.

17 We're recommending that R-3 and R-4 be  
18 lowered to a 60 foot maximum for public schools. It's  
19 still higher than the 40 foot allowed for all other  
20 buildings; and that the 90 foot and up be allowed for  
21 R-5 Districts. You'll see in my report there that the  
22 test for each of those changes is located below.

23 The fourth major change would change  
24 Section 206 to allow any school that doesn't meet  
25 those requirements to move forward as a special

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1 exception under similar standards as private schools  
2 would. Therefore, lessening the requirements from a  
3 variance and making it easier for schools to proceed  
4 that don't meet all the guidelines of this section.

5 Section 5 addresses the C-1 district and  
6 raises the FAR to 1.8. Currently, the C-1 district  
7 has a 1.0 FAR with no exception for public schools.  
8 You'll note that the R-5 and R-4 districts allow a  
9 1.8, and the higher C districts allow higher. We felt  
10 it was inappropriate for this district to step back  
11 down to a 1.0 and we tried to bring it in line with  
12 the R-4 and R-5 districts that tend to surround the C-  
13 1 district.

14 Changes six, seven, and eight allow public  
15 schools in SP, CR, and W districts. Currently, public  
16 schools are not addressed in the text of those  
17 districts and not allowed as a matter of right. This  
18 text amendment would clean that -- clean up that  
19 oversight and allow public schools in ever district in  
20 the city.

21 The ninth proposed change is in the  
22 Chapter 21, regarding parking. Currently, there are  
23 no parking standards for pre-elementary schools. They  
24 have traditionally fallen under the Child Development  
25 Centers, but charter schools have not necessarily --

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1 do not necessarily fall under that definition. And  
2 this would create a standard for pre-elementary  
3 schools that would be in line with the standard for  
4 elementary schools of two parking spaces for each  
5 three students.

6 I don't know if you've received the  
7 supplemental report, but the supplemental report calls  
8 that a tenth change that would address split-zoned  
9 lots. The lot area requirements, as you will note,  
10 are for residential zones. We're proposing that any  
11 existing lot that is split-zones, public schools be  
12 allowed to follow the restrictions for the less  
13 restrictive zone. So, if there's a commercial and a  
14 residentially split zone, they would -- they would be  
15 able to be a commercial lot for purposes of lot area  
16 and lot width.

17 As I mentioned, we've worked closely with  
18 the Department of Public -- D.C. Public Schools and  
19 other community groups in outlining this. We feel that  
20 we've created some standards that are -- are -- both  
21 protect the residential neighborhoods and provide  
22 flexibility in the development of schools in the  
23 District.

24 And we recommend that this be -- this text  
25 amendment be set down for emergency -- emergency

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1 action. Currently, there are over 50 charter schools  
2 in the District and seven more charters are granted  
3 each year. This language is needed to specifically  
4 and immediately equate charter schools to D.C. public  
5 schools and clarify the guidelines for public school  
6 buildings.

7 Further, the text amendment would  
8 immediately open up some zones of the city that do not  
9 currently allow public schools. Delaying the  
10 effective date of this amendment until the final order  
11 would leave this issues unresolved and the standards  
12 and timing of projects that would happen in the next  
13 year ambiguous. So we recommend that the -- this text  
14 amendment be set down and we recommend it as an  
15 emergency amendment.

16 CHAIRPERSON MITTEN: Thank you. I just  
17 have a general question before we get to some more  
18 specific questions; which is, what -- you gave us a  
19 list of charter schools on the back page of your  
20 summary of locations and site areas and so on. Do any  
21 of these charter schools have Certificates of  
22 Occupancy?

23 MR. PARKER: It is my belief that all of  
24 these are currently active. So they should all have  
25 Certificates of Occupancy.

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1 CHAIRPERSON MITTEN: So, given that the  
2 definition is one of the things that's at issue,  
3 whatever -- whatever Certificate of Occupancy they  
4 have is likely to be in error? Is that correct?

5 MR. PARKER: They were likely issued  
6 Certificates of Occupancy as public schools. I've not  
7 looked into the C of O's for these schools. If not,  
8 they could -- when they made changes, they could be  
9 issued C of O's as public schools.

10 CHAIRPERSON MITTEN: Okay. Mr. Bergstein,  
11 do you see any issue that we need to be conscious of  
12 when we act on this?

13 MR. BERGSTEIN: There's the procedural  
14 question as to whether or not you would want this  
15 emergency to apply to or not apply to persons which  
16 have applied for building permits before DCRA, absent  
17 some saving language.

18 CHAIRPERSON MITTEN: I'm actually focusing  
19 on the existing charter schools and their Certificates  
20 of Occupancy.

21 MR. BERGSTEIN: If -- if the -- there was  
22 a case that came out about a year ago that's called  
23 Chagnon, that said that if a use is defined, that the  
24 Zoning Administrator doesn't have the authority to  
25 issue C of O's for a use that's like that, unless it

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1 meets every part of the definition.

2 And indeed, the reason why the Zoning  
3 Commission is taking up the question of adult daycare  
4 is because the effect of that ruling was, in essence,  
5 to invalidate all the existing C of O's for those  
6 uses.

7 So there is an issue that, unless the  
8 Zoning Commission creates a new definition for public  
9 schools, the existing C of O's for any charter school  
10 that has a public school -- particularly those that  
11 were issued after Chagnon, would be suspect.

12 CHAIRPERSON MITTEN: So any charter school  
13 that now has a Certificate of Occupancy for a public  
14 school, this would actually make those correct, as  
15 opposed to --

16 MR. BERGSTEIN: That is correct. The use  
17 would then be correct.

18 CHAIRPERSON MITTEN: Okay. Thank you.  
19 Questions for Mr. Parker? Mr. Hood?

20 VICE-CHAIRPERSON HOOD: Yes. Mr. Parker,  
21 help me understand. And I notice in what's being  
22 proposed, when it talks about the C-M-1 zone and  
23 public charter schools, I think you were saying that  
24 if it's in the C-M-1 zone and there's a proposal, then  
25 it would go as a special exception?

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1 MR. PARKER: No. Not at all.

2 VICE-CHAIRPERSON HOOD: Okay.

3 MR. PARKER: Schools are currently allowed  
4 in C-M-1 zone, and would follow the restrictions of  
5 that zone. And we're not proposing any change to  
6 that.

7 VICE-CHAIRPERSON HOOD: Okay. So schools  
8 are currently allowed in the C-M-1 zone?

9 MR. PARKER: It's the CR, SP, and W zones  
10 that don't currently allow schools. And this would  
11 allow them in those zones subject to the requirements  
12 of those zones. We're not proposing any changes to  
13 the requirements of those zones.

14 VICE-CHAIRPERSON HOOD: Right. I  
15 understand that. But I'm just trying to look back to,  
16 like the Chair was talking about, some things that  
17 already exist. Schools are already allowed -- I'm  
18 trying to make sure I understand. Schools are already  
19 allowed in the C-M-1 zone?

20 MR. PARKER: Yes.

21 VICE-CHAIRPERSON HOOD: I will go on  
22 record to say we really need to revisit that. Because  
23 when you have a school, whether it's public charter or  
24 public school, and I'm not second guessing anyone,  
25 next to a trash transfer station, there's a problem.

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1       There's a problem.

2                   When I went to school, I didn't go to  
3       school next to trash. I really didn't. And I think  
4       -- I don't know if this is the proper time, but I'll  
5       put it out there. We need to really revisit that.  
6       And I'm looking at some of these schools that are in  
7       the C-M zones. I know one in particular. I think  
8       that it's a serious problem for this city to have  
9       those kids going to school next to a trash transfer  
10      station.

11                   CHAIRPERSON   MITTEN:       Anyone   else?  
12      Questions for Mr. Parker? Mr. Parsons.

13                   COMMISSIONER   PARSONS:     I'm not yet  
14      convinced I understand the emergency here. You  
15      mentioned that there was -- I think you mentioned  
16      seven applications a year that are being dealt with.  
17      What is the citywide emergency that causes us -- I  
18      mean, we don't do emergencies very often. And we do  
19      it in the context of something is wrong citywide here  
20      and we need to declare an emergency.

21                   MS. STEINGASSER:   If I may, Mr. Parsons.  
22      When we started to circulate these regulations we were  
23      -- everyone who was involved with the public -- with  
24      the public school charter process began to tell us of  
25      one school after another that was going to be

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1 adversely impacted; one school after another that was  
2 in the process of either designing a school,  
3 purchasing land, teaming up with another school to  
4 purchase land; was under constructions; was getting  
5 ready to file for permits.

6 We felt it was in the best interest of all  
7 of those schools to know what the regulations were  
8 going to be as soon as possible. So, if they needed  
9 to get a special exception, they could immediately  
10 begin to work in that direction.

11 If they needed to change course and look  
12 at other land alternatives, they would know that as  
13 soon as possible. And that they wouldn't be delayed  
14 for the standard set down; four month public hearing;  
15 proposed action; costing them what could reasonably be  
16 presumed to be a full education year.

17 They would be -- if they got to the end of  
18 the text amendment; they found out they needed a  
19 special exception, then they'd have to get in line for  
20 that.

21 So we felt it was in the best interest of  
22 the schools and the education process to let that be  
23 known as soon as possible.

24 MS. MCCARTHY: In addition, the whole  
25 origin of the Office of Planning looking at this was

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1 an indication by the Zoning Administrator that he had  
2 applications either before him or expected them and  
3 felt that the definition as it was currently  
4 constituted did not include charter schools as public  
5 schools. So he wanted a determination made by the  
6 Zoning Commission.

7 The Commission then asked the Office of  
8 Planning to weigh in with a proposal. So, at this  
9 point, the Zoning Administrator feels that the zoning  
10 regulations would not permit him to consider charter  
11 schools to be public schools, even though there's  
12 clear legislative history that would indicates that  
13 that was the intention. But until section -- until  
14 the Section 199 definition is revised, charter schools  
15 could not technically be approved. So we -- we felt  
16 we needed to act quickly and not wait for the 60 day  
17 period, basically, for a set down, in order for the  
18 definitional issue to be resolved.

19 COMMISSIONER PARSONS: Thank you. That's  
20 very helpful. Thank you.

21 CHAIRPERSON MITTEN: Anyone else? I just  
22 had a couple of technical points. In 201.1K, where we  
23 would potentially allow the schools that shared  
24 certain recreation space to basically each count them  
25 towards their minimum lot area, would that be if they

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1 were located on either the same lot or immediately  
2 adjacent lots? Or -- what's the degree of proximity  
3 required?

4 MR. PARKER: Well, that's the intent. I  
5 think it's adjacency. And we could -- we could  
6 certainly clarify that language.

7 CHAIRPERSON MITTEN: And then, in terms of  
8 adjacency, just to follow through on that, in 401.8  
9 you're suggesting that for public schools the minimum  
10 lot area may include adjacent parcels under the same  
11 ownership that are separated only by an alley. So  
12 would shared facilities that were separated by an  
13 alley also be counted towards the minimum lot area if  
14 they weren't, in fact, in the same ownership?

15 MR. PARKER: Not by -- not by this  
16 language, but yes, we could certainly --

17 CHAIRPERSON MITTEN: I'm just wondering  
18 what you intended.

19 MR. PARKER: -- modify that. Well, the  
20 intent for this was two parcels, for example the  
21 school and, you know, the recreation facility on  
22 opposite sides of an alley, under the ownership of the  
23 school. But, we could certainly play with the  
24 language to include shared facilities on opposite  
25 sides of an alley.

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1 CHAIRPERSON MITTEN: Okay. And then, just  
2 because, you know, I think it's come up from time to  
3 time when we're trying to measure something that maybe  
4 is not -- I mean, I can measure a gymnasium fairly  
5 easily because it's got four walls. I can't measure  
6 a field quite so easily. I can't necessarily measure  
7 a playground.

8 So anything you could add about how those  
9 would be measured so that we don't just drift into the  
10 landscaping and stuff I think would be helpful.

11 In 206.2, on your page 4; 206.2 deals with  
12 a private school, whereas above you had introduced the  
13 notion of a public school that doesn't meet the  
14 requirements of Chapter 4, do you also want public  
15 school added to 206.2?

16 MR. PARKER: You're right. We should put  
17 public and private schools.

18 CHAIRPERSON MITTEN: Okay. And then I  
19 just had sort of a general question, because it  
20 occurred to me as I was reading the parking  
21 requirements. When we talk about parking, we make the  
22 distinctions for parking by the age groups of the  
23 children that are attending the school. Everything  
24 else is delineated on public/private.

25 So I didn't know if you guys had given any

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1 thought to is public/private really the proper  
2 delineation? Because we don't do it for parking. Or  
3 is it -- or should we be making -- slicing this a  
4 different way?

5 MR. PARKER: In terms of 206?

6 CHAIRPERSON MITTEN: In terms of -- well,  
7 just the way we handle schools everywhere except  
8 Chapter 21. We handle them one way, by age groups,  
9 for parking purposes. And we handle them by who runs  
10 them for every other purpose. And I didn't know -- I  
11 didn't know if you'd thought about it.

12 MR. PARKER: It hadn't really come up.

13 MS. STEINGASSER: Some of the comments we  
14 have gotten back have asked us to revisit parking  
15 standards for the schools, pointing out that, in many  
16 cases high school kids can't actually drive to school  
17 until they're 18, so there's not really -- the  
18 standards may not be as applicable as they used to be.

19 So, we'll be happy to take a look at that  
20 and look at it terms of -- of the use versus the age  
21 group issue.

22 CHAIRPERSON MITTEN: And I just didn't  
23 know if it was relevant in other context besides just  
24 parking. Is the age of the student body relevant when  
25 you're talking about, you know, lot occupancy and --

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1 MS. STEINGASSER: Well, we tried -- we  
2 tried to stay away from anything that actually got to  
3 dictating program. And that's why we're silent on  
4 whether there -- a school should have fields or a  
5 gymnasium. Because, especially when we're bring the  
6 charter and public -- traditional public schools  
7 together under one definition, the charter schools by  
8 their very nature are alternative education to the  
9 public traditional system.

10 So, we tried to stay away from things that  
11 would kind of require program dictation to the schools  
12 themselves in how they're used. We went with this on  
13 the parking standard because it is the standard format  
14 that's in -- that's in the current regs. We didn't  
15 look -- we looked to change as little as we could in  
16 this case. And revisit as little as we could. But  
17 we'll -- we'll be happy to look at that again.

18 Like I said, we have gotten comments from  
19 others that the parking standards may be a bit  
20 archaic.

21 CHAIRPERSON MITTEN: Okay. Anyone else?

22 MS. MCCARTHY: I could also see that part  
23 of why we determined the lot width that we determined  
24 was to allow car -- the appropriate widths for a car  
25 drop off and pick up. And we know from experience

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1 with the private school special exceptions that it's  
2 because pre-school and smaller children take a lot  
3 more time to get out of the car seats and get their  
4 lunch boxes and various things together, as opposed to  
5 older children, that maybe we should look as well as  
6 to whether we could provide differently for pick up  
7 and drop off for older children and require less --  
8 less space for that.

9 CHAIRPERSON MITTEN: Okay. Thank you.  
10 Any other questions?

11 COMMISSIONER JEFFRIES: Yes. Madam Chair,  
12 I'm just -- I think there's a lot of -- a lot to chew  
13 on here. There's a lot of information. And I went  
14 through it and, you know, I just felt like I need to  
15 absorb it a little bit longer. You know, I'm  
16 wondering if there's a place in between sort of set  
17 down and emergency basis. I -- I -- and I don't know  
18 if we can get there.

19 I mean, I understand that the dilemma  
20 around, you know, the text amendments and your notice  
21 and so forth and so on. But, you know, I mean, I just  
22 feel that there's a number of issues here. And I'm  
23 just trying to figure if there's some other way in  
24 which we can do this without setting down and then,  
25 right away, it becomes --

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1 CHAIRPERSON MITTEN: There's -- I guess  
2 there's a couple of -- there's a couple of thing  
3 available to us. One is, we do it all as an emergency  
4 and we -- which is the first request from the Office  
5 of Planning. And the second request is that we  
6 authorize the issuance of a Notice of Proposed Rule  
7 Making, based on what's here, rather than having a  
8 supplemental report written.

9 The -- so -- so, we can do that. We can  
10 parse it -- you know, we can parcel it out. And, you  
11 know, for instance, the definition is I would say the  
12 most crucial part because of what's pending out there.  
13 And we can marry that with an immediate advertisement,  
14 which would then accomplish at least part of what Ms.  
15 Steingasser was saying, which is we're putting people  
16 on notice that these are going to be the rules.

17 It's not quite the same. It doesn't have  
18 the same teeth as doing all of it as an emergency, but  
19 it certainly puts everyone on notice and gives the  
20 Zoning Administrator a clear indication of the  
21 direction that we intend to go.

22 And the other would just be to set down  
23 the case as a normal case and not do anything on an  
24 emergency. Or we can immediately advertise. So,  
25 there's like four versions -- four variations. Mr.

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1 Turnbull?

2 COMMISSIONER TURNBULL: I think I would --  
3 I kind of like the idea of at least defining the  
4 charter school. I think that's something that sounds  
5 like it needs to be done, and to call it a public  
6 school. And let's get that off the table. But -- and  
7 then, again, revisit some of these other things or  
8 spend some more time on them, or whatever.

9 But it sounds like that's something that  
10 they're looking -- the Administrator's looking for us  
11 to deal with. I would go along with that.

12 CHAIRPERSON MITTEN: Okay. Let me -- let  
13 me say it. And then, if you want to move it, then --  
14 so that we would -- we would act on an emergency basis  
15 to adopt the definition that the Office of Planning  
16 has -- has suggested. So we would amend Section 199.1  
17 in the definition of public school. And then we would  
18 issue a Notice of Proposed Rule Making for that  
19 definition and the balance of the amendments proposed  
20 by the Office of Planning. Would you move that?

21 COMMISSIONER TURNBULL: I would.

22 CHAIRPERSON MITTEN: Okay.

23 COMMISSIONER JEFFRIES: I'll second.

24 CHAIRPERSON MITTEN: Okay. Any further  
25 discussion on that? And I just want to be clear that

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1 we're adding in No. 10, which has to do with the split  
2 zone lots.

3 VICE-CHAIRPERSON HOOD: Let me make sure  
4 I understand. The only thing we're doing is the  
5 definition. We're doing that as an emergency?

6 CHAIRPERSON MITTEN: Yes.

7 VICE-CHAIRPERSON HOOD: And everything  
8 else we're doing comes upon our normal set down rules?

9 CHAIRPERSON MITTEN: Well, we wouldn't  
10 wait for a supplemental report before the  
11 advertisement.

12 VICE-CHAIRPERSON HOOD: But we will set it  
13 down

14 CHAIRPERSON MITTEN: Yes.

15 VICE-CHAIRPERSON HOOD: But we're going to  
16 set it down. So it's still --

17 CHAIRPERSON MITTEN: Correct.

18 VICE-CHAIRPERSON HOOD: -- everything will  
19 still come up under the set down rules?

20 CHAIRPERSON MITTEN: Yes.

21 VICE-CHAIRPERSON HOOD: Okay.

22 CHAIRPERSON MITTEN: Although the set down  
23 rule doesn't apply to a text amendment.

24 VICE-CHAIRPERSON HOOD: Okay. So, in  
25 other words, this is still lingering on.

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1 CHAIRPERSON MITTEN: Well it's -- they're  
2 -- they're -- the -- the Zoning Administrator can only  
3 enforce on the definition; not the balance of it --  
4 not the balance of the amendments being proposed.

5 VICE-CHAIRPERSON HOOD: Okay. Because I  
6 -- I think the initial request was that we set  
7 everything down to the emergency. Right?

8 CHAIRPERSON MITTEN: Correct.

9 VICE-CHAIRPERSON HOOD: So, obviously,  
10 unless I missed something; so -- so that initial  
11 request has not won a waiver. But I think that the --  
12 I'm just wondering what harm are we doing? Because I  
13 do -- I do agree with my colleagues. Because I have  
14 some issues with some stuff that's -- that's in --  
15 that's probably been in here. But I'm just curious,  
16 are we creating more of a problem by not putting that  
17 in as an emergency? That's just a question.

18 CHAIRPERSON MITTEN: Well, we can ask the  
19 Office of Planning.

20 VICE-CHAIRPERSON HOOD: Okay. Through you  
21 to the Office of Planning.

22 CHAIRPERSON MITTEN: Okay.

23 MS. STEINGASSER: I'll venture out. The  
24 proposal we've brought to you today is an attempt to  
25 balance the rights of the public schools, whether

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1 they're charter or traditional, with the potential  
2 adverse impacts to neighborhoods. And, based on the  
3 fact that some people -- half the group thinks we've  
4 gone too far and the other half thinks we haven't gone  
5 far enough, we think we've struck that balance.

6 The potential to setting down just the  
7 definition as an emergency and leaving the rest of the  
8 text in a standard rule making context is that all --  
9 all the -- all schools now are a matter of right, with  
10 no -- with the most minimal restrictions that are  
11 currently on the zoning regs.

12 Where that's of concern to us is in the R-  
13 2, R-3, and R-4 zone districts. Those allow buy right  
14 adjoining buildings. So a -- somebody can build right  
15 up to your property wall attached to your building and  
16 operate a school of some sort with the most minimal --  
17 and it's not even the most minimal.

18 Under the current regs, public schools of  
19 any type have excessive lot occupancy. They can go up  
20 to 100 percent lot occupancy in these zones, provided  
21 that it's only two stories. They can -- they have an  
22 excessive FAR and height that is not in character with  
23 the residential zone of those three categories.

24 That's why we've focused on the R-2, R-3,  
25 and R-4 zones. Those are zones that have the smallest

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1       lots; the most minimal areas and street frontage, and  
2       the greatest potential for adverse impact of  
3       complimentary land uses. I mean, we agree that that's  
4       -- you know, there's a density issue; schools need to  
5       be where there's families. But, when you get into  
6       lots that are only 4,000 square feet, that's two row  
7       house lots. That's a pretty darn small lot.

8               And the impact of being able to have a 90  
9       foot building in an R-4 zone where residents can only  
10      be 50 feet, and you can double your FAR, it's -- it's  
11      a potential for a very great neighborhood impact.

12             So, that's why we kind of focused our most  
13      stringent regulations on that rule. So, if you move  
14      forward with the motion, as you've written, you've  
15      allowed the maximum buy right opportunities with the  
16      least amount of restrictions. So it kind of -- the  
17      balance is now a little bit --

18             CHAIRPERSON MITTEN: I think I have a --  
19      I think I have a solution. We'll see if it -- if it  
20      takes. Mr. Turnbull, would you accept this as  
21      friendly amendment, which is just that we add -- we  
22      just take two of the -- of the suggestions that -- the  
23      suggested amendments. So, the first one would be the  
24      definition. The second would be what is articulated  
25      as Number 3, by the Office of Planning, which is amend

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1 sections 400, 401, and 403 as noted in the chart. And  
2 then the balance -- as in the chart and in the  
3 subsequent text amendments that follow it for 400.10,  
4 400.11, 401.8, and 403.1. And then we'll allow the  
5 more housekeeping things to catch up. Would you  
6 accept that as a friendly amendment?

7 COMMISSIONER TURNBULL: Yes. I think  
8 you're key concern is the 120 foot width that you're  
9 looking for in the future?

10 MS. STEINGASSER: I guess our key concern  
11 is the fact that schools can be twice as dense as  
12 their residential neighbors, and can attach to the  
13 buildings.

14 COMMISSIONER TURNBULL: Okay.

15 MS. STEINGASSER: Yes. So it does -- it's  
16 the lot size and the -- the street width and the  
17 height. So that, it -- it's the physical structure  
18 itself and the potential for that -- that impact on  
19 the neighborhoods.

20 COMMISSIONER TURNBULL: I would -- I would  
21 move to include that then.

22 CHAIRPERSON MITTEN: Okay. And who was  
23 the second? Mr. Jeffries? Do you accept that?

24 COMMISSIONER JEFFRIES: Well, just a quick  
25 question. So this is in terms of what you fear could

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1       happen in the R-1, R-2 zones. This is imminent? I  
2       mean, we -- we can see this happening next month or  
3       two?

4               MS. STEINGASSER: Imminent? I -- I don't  
5       know if there's schools out there looking at this  
6       category. But, under the proposed -- under the  
7       original motion, it could be allowed as a matter of  
8       right.

9               COMMISSIONER JEFFRIES: Okay. That's what  
10       I'm -- yes. I guess what I'm saying in terms of the  
11       window of time -- I mean, I -- I'm getting a sense,  
12       based on emergency, that, you know, there's a line of  
13       people sort of, you know, waiting; schools to go in  
14       and build these -- monstrosities in R-1, R-2. And --  
15       but you're -- am I missing something here? I mean --

16              MS. STEINGASSER: No. And I -- I wouldn't  
17       call them monstrosities. It's -- it's just -- it's a  
18       -- it's a scale difference.

19              COMMISSIONER JEFFRIES: Right. Right.  
20       Right.

21              MS. STEINGASSER: I don't know where they  
22       are. I know when we sent them out to the Association  
23       for Public Charter Schools and -- and some other  
24       charter groups, they responded that this is going to  
25       impact a lot of schools that are out there; especially

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1 the smaller incubator schools that are looking at the  
2 smaller pieces of land and the smaller -- because of  
3 the -- because of the economics. And so that's our  
4 concern is that they be given as much advance notice,  
5 as well.

6 COMMISSIONER JEFFRIES: Okay. I -- I'm  
7 fine. I will second this. I just have a general  
8 comment. You know, when I see the word emergency, you  
9 know, I'd like to feel that there's an emergency. And  
10 I'm not quite feeling it. But -- but I -- I'm willing  
11 to move the evening along here.

12 CHAIRPERSON MITTEN: I think there's a  
13 couple of things -- if I could, just on the notion of  
14 emergency. One of the emergencies that I recall was  
15 when we did electronic facility regulations. And that  
16 was because all of a sudden there were -- there were  
17 a whole bunch of these uses that we'd never even heard  
18 of before and we had to learn about. And they were --  
19 had the potential to change the character of the whole  
20 district. And that was -- and that was one kind of  
21 sort of -- there was one kind of adverse impact that  
22 would have resulted from that.

23 I think this issue, because as we all well  
24 know, these are -- these are very sensitive issues, so  
25 it might not be the potential for, in terms of land

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1 use potential, might not be there. But the potential  
2 for impact to people, you know, and their lives is  
3 great. It's a different kind of impact. But I don't  
4 think it's any less than what we've experienced in  
5 other cases.

6 COMMISSIONER JEFFRIES: Just -- we --we  
7 dealt with, I believe, you know, occupancy issues  
8 around Katrina and the students.

9 CHAIRPERSON MITTEN: Yes.

10 COMMISSIONER JEFFRIES: I mean, that what  
11 clearly what I saw as an emergency. I clearly  
12 understand the whole notion and the nuance of -- of,  
13 you know, that in accumulation, something could, in  
14 fact, be. But I -- I just, you know, I just don't  
15 want to set a precedent that -- that, you know, we're  
16 just constantly doing emergencies here.

17 CHAIRPERSON MITTEN: Right. Even though  
18 we have two before us tonight. But, okay. So, just  
19 to -- just to recap. We -- the motion is to take  
20 emergency action with respect to the definition of  
21 public school and the proposed amendments to Sections  
22 400, 401, and 403. And then to set down the entire  
23 text that the Office of Planning has proposed, with a  
24 few little minor changes that we had suggested, and  
25 authorize immediate publication of the Notice of

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1 Proposed Rule Making and Notice of Public Hearing.  
2 And we have a -- Mr. Turnbull made that motion. Mr  
3 Jeffries seconded that motion. Is there any further  
4 discussion?

5 All those in favor, please say aye.

6 ALL: Aye.

7 CHAIRPERSON MITTEN: Those opposed, please  
8 say no. Ms. Schellin.

9 MS. SCHELLIN: Staff will record the vote  
10 five to zero to zero to set down the emergency action  
11 -- I'm sorry, to set down Case No. 06-06 and to take  
12 emergency action as discussed. Commissioner Turnbull  
13 making the motion; Commissioner Jeffries seconding;  
14 Commissioners Mitten, Hood, and Parsons in favor.

15 CHAIRPERSON MITTEN: Thank you. Now we  
16 will go to Case No. 06-05. And this is a text  
17 amendment; a proposed text amendment to -- this is our  
18 second emergency -- to Section 401; which is something  
19 that has become near and dear to my heart. Ms.  
20 Thomas.

21 MS. THOMAS: Good evening Madam Chairman  
22 and members of the Commission. I'm Karen Thomas with  
23 the Office of Planning. And we are requesting set  
24 down on an emergency basis for the amendment of  
25 Section 410 to address an inconsistency in the

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1 language as it relates the R-4 Zone District.

2 Correction of this inconsistency, whether  
3 derived as a result of a codification error or not, is  
4 an effort to address a present land use threat to the  
5 R-4 Zone District and to provide guidance in future  
6 applications of Section 410.

7 This inconsistency has character  
8 implications for the R-4 Zone District if the section  
9 continues to be interpreted to allow the introduction  
10 of multiple units in a single building, contrary to  
11 the intent and purposes of the R-4 Zone District  
12 prescribed in Section 330.

13 The Office of the Attorney General advised  
14 that a memorandum will be provided to the Commission,  
15 fully explaining the issue of the possible  
16 codification error of Section 410. We are also  
17 requesting that the Commission authorize the issuance  
18 of a Notice of Proposed Rule Making for the text and  
19 that the Commission allow the immediate advertisement  
20 of the text without waiting for the submission of a  
21 supplemental report. And this would allow for full  
22 consideration of a proposed rule within the 120 day  
23 length of the emergency.

24 If the Zoning Commission agrees to set  
25 down the proposed text amendment, we would provide

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1 further analysis in support of our amendment to 410,  
2 that reflects the Commission's prior intent that the  
3 R-4 District not be eligible for consideration under  
4 Section 410. OP, in the second phase of this case,  
5 would also be willing to include additional proposed  
6 amendments to 410 to provide clarity to its  
7 provisions.

8 Therefore, we would recommend removal of  
9 references to the R-4 in the title of 410 in Section  
10 410.12, as shown in our report. Thank you.

11 I'd just like to add one more thing. We  
12 would also recommend that applications already filed  
13 before the BZA not be included or affected by this  
14 emergency.

15 CHAIRPERSON MITTEN: Okay. All right.  
16 Well, just to get the conversation started, I will  
17 move that we take emergency action to remove  
18 references in Section 410 to the R-4 Zone District,  
19 and then to set down the entire text for hearing and  
20 to authorize immediate publication of the proposed  
21 rule making and Notice of Public Hearing; for the  
22 following reason.

23 I've sat on two BZA cases now that people  
24 have sought to invoke this provision 410 for the R-4  
25 District. And it just doesn't fit. It clearly wasn't

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1 intended to -- to work.

2 Basically what the cases that I've sat on  
3 have involved what would otherwise be lots that are --  
4 lots with buildings that don't meet the -- don't meet  
5 the requirements for individual dwelling lots, you  
6 know, or either row houses or flats. But in the  
7 aggregate, they do. But there's nothing stopping  
8 someone later from going and then subdividing these  
9 after the fact. And it just doesn't seem to be  
10 consistent with whatever it was that was intended at  
11 the time that R-4 was included.

12 Is there a second?

13 COMMISSIONER JEFFRIES: Second.

14 CHAIRPERSON MITTEN: Thank you. One thing  
15 I'd also like to add, and I don't -- I don't intend  
16 that this would be part of the emergency. But I would  
17 like it, as part of what we set down for  
18 consideration, is that the entire section be struck.  
19 Because I frankly don't know what good it -- I don't  
20 think it would yield good results, even in the R-5  
21 Zones. So I'd like that advertised in the  
22 alternative.

23 Anyone have questions, comments,  
24 discussion? All right. Then we have a motion and a  
25 second to take emergency action as it relates to the

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1 R-4 language in Section 410, and to set down the  
2 proposed amendments from the Office of Planning and,  
3 in the alternative, to strike the entire section and  
4 issue a Notice of Proposed Rule Making and Notice of  
5 Public Hearing.

6 All those in favor, please say aye?

7 ALL: Aye.

8 CHAIRPERSON MITTEN: All those opposed,  
9 please say no. Ms. Schellin.

10 MS. SCHELLIN: Staff would record the vote  
11 as five to zero to zero to set down Case No. 06-05 to  
12 take emergency action and to advertise the alternative  
13 to strike the entire section; Commissioner Mitten  
14 moving; Commissioner Jeffries seconding; Commissioners  
15 Hood, Parsons, and Turnbull in favor.

16 CHAIRPERSON MITTEN: Okay. I just want to  
17 make -- make it clear that we're -- the emergency only  
18 applies to the R-4 language. Is that --

19 MR. BERGSTEIN: I understand. You didn't  
20 address the -- the --

21 CHAIRPERSON MITTEN: Oh, I'm sorry.  
22 You're right. You're right, we didn't. So the  
23 question would be, would this apply to any cases that  
24 were currently pending before the Board of Zoning  
25 adjustment.

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1                   MR. BERGSTEIN: If I could just draw the  
2                   distinction between the case you've just heard and the  
3                   case you're now considering, in that case, because you  
4                   didn't put in saving clause, it would apply to persons  
5                   who have building permits applications before DCRA,  
6                   but the worst case scenario in that case is that they  
7                   would apply for a special exception if they didn't  
8                   meet the area requirements.

9                   In this case, if you don't put in the  
10                  savings clause, anyone who has a BZA application would  
11                  be, at this point, summarily -- would not have that  
12                  relief available to them at all. There's no  
13                  alternative. So there is a distinction between the  
14                  two cases that I did want to point out to you.

15                 CHAIRPERSON MITTEN: Thank you. So then,  
16                 I guess, just to add on to what I should have said in  
17                 the first place, I would move that we -- what's the  
18                 right word?

19                 MR. BERGSTEIN: If you affirmatively want  
20                 to do it -- have a savings clause, you would say that  
21                 would not apply to any applicant with a BZA  
22                 application filed before today.

23                 CHAIRPERSON MITTEN: Okay. So then I would  
24                 move that the emergency action that we just took not  
25                 apply to any BZA application that makes use of Section

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1 401 in R-4 Zone District if the application was filed  
2 by today.

3 COMMISSIONER JEFFRIES: Second, again.

4 CHAIRPERSON MITTEN: Is there any  
5 discussion? All those in favor, please say aye.

6 ALL: Aye.

7 CHAIRPERSON MITTEN: Those opposed, please  
8 say no. Ms. Schellin.

9 MS. SCHELLIN: Staff will record the vote  
10 five to zero to zero to exempt current BZA  
11 applications from the emergency if filed before today.  
12 Commissioner Mitten moving; Commissioner Jeffries  
13 seconding; Commissioners Hood, Parsons, and Turnbull  
14 in favor.

15 CHAIRPERSON MITTEN: Thank you. Okay.  
16 The next case is Case No. 06-07. And, to begin, we  
17 have a request for a waiver of the late submittal of  
18 this report, and that the request from the Office of  
19 Planning. Is there any objection to granting the  
20 waiver?

21 Okay. Without objection, then we'll turn  
22 to Mr. Mordfin to tell us about Case No. 06-07.

23 MR. MORDFIN: Good evening Chair and  
24 members of the Commission. I'm Steven Mordfin with  
25 the Office of Planning. And, in this case, the

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1 subject properties are all improved as row houses  
2 fronting on either Ingraham Street, or Jefferson  
3 Street.

4 They're located within the C-2-A Zone  
5 District and both Ingraham and Jefferson Street on  
6 Ingraham and Jefferson west of Georgia Avenue and are  
7 recommended for the moderate density land use by the  
8 Generalized Land Use Map of the Comprehensive Plan.  
9 None of these properties have frontage on Georgia  
10 Avenue.

11 Community members have expressed concern  
12 that these existing row house slots which front on  
13 either Ingraham or Jefferson could be converted to C-  
14 2-A uses, resulting in the encroachment of C-2-A uses  
15 and densities onto the residential side streets off of  
16 Georgia.

17 The application proposes the R-3 Zone  
18 District for the subject properties. The R-3 is  
19 consistent with the Moderate Density Residential Land  
20 Use designation of the Generalized Land Use Map. It  
21 is also consistent with the existing zone district  
22 immediately to the west of the subject properties that  
23 are located between Ingraham and Jefferson.

24 Row houses are use permitted as a matter  
25 of right within the R-3 Zone District. The

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1 Comprehensive Plan recommends the preservation,  
2 protection, and stabilization of Ward 4's housing  
3 stock and cites the encroachment of commercial and  
4 other non-residential uses into residential areas;  
5 particularly disturbing in the residential areas  
6 abutting Georgia Avenue.

7 Therefore, the Office of Planning  
8 recommends that the Commission set down the subject  
9 application to change the zoning out of properties as  
10 listed in the application from the C-2-A to the R-3  
11 Zone District. Thank you.

12 CHAIRPERSON MITTEN: Thank you. Questions  
13 for Mr. Mordfin?

14 COMMISSIONER JEFFRIES: I have a question.  
15 So, right now we have C-2-A and we have one, two,  
16 three, four lots. No, I'm sorry; seven lots either  
17 facing Jefferson to the north or is it Ingram or --

18 MR. MORDFIN: Ingraham.

19 COMMISSIONER JEFFRIES: Ingraham. Okay.

20 CHAIRPERSON MITTEN: It depends on what  
21 part of the country you're from.

22 COMMISSIONER JEFFRIES: And I guess what  
23 I'm trying to get comfortable with is the -- what's  
24 the intent of the -- of the Comp Plan as it relates to  
25 Georgia Avenue being sort of a retain corridor?

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1 Because, in terms of a footprint, I mean, some of the  
2 newer retailers will need more square footage. You  
3 know, to be along Georgia Avenue. At least, that's  
4 what I'm assuming. Will -- will this obviously have  
5 some impact? I mean, obviously it will. I mean, if  
6 you're looking to -- to flip this up to an R-3.

7 So, what -- what will be the impact of  
8 this changes as it relates to retail along Georgia  
9 Avenue?

10 MS. STEINGASSER: Commissioner Jeffries,  
11 I don't think it will have a direct impact on Georgia  
12 Avenue. These lots, as you can see by the map  
13 attached at the back of our report, are oriented  
14 parallel to Georgia Avenue, as opposed to  
15 perpendicular. They're part of the residential fabric  
16 of the side streets and not necessarily the Georgia  
17 Avenue streets.

18 As you look to the east site of Georgia  
19 Avenue, the lots however are much deeper; they're  
20 oriented towards Georgia Avenue; and they're clearly  
21 designed to fit -- to front on the more commercial  
22 street; whereas the lots in question that we've  
23 proposed set down for are long narrow row house lots.  
24 And they would -- what we believe, after looking at  
25 the land use pattern out there, would actually kind of

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1 bring commercial into the neighborhood where it's not  
2 wanted. It would almost, you know, unfocus it from  
3 Georgia and start brining it back into the residential  
4 neighborhoods.

5 COMMISSIONER JEFFRIES: Yes. But you would  
6 still have frontage -- some frontage along Georgia  
7 Avenue. It's just that it would go back, as you say,  
8 into some of the residential.

9 Just what -- what's the square footage?  
10 What's the footprint, let's say, of those parcels that  
11 face Ingraham?

12 MR. MORDFIN: The ones that face --

13 COMMISSIONER JEFFRIES: I mean, if you  
14 want -- what would be just the footprint there? Do  
15 you know?

16 MR. MORDFIN: I have the square footage of  
17 each individual lot.

18 COMMISSIONER JEFFRIES: Okay. Just --

19 MR. MORDFIN: 1204 is 2,946, and let's  
20 see.

21 COMMISSIONER JEFFRIES: How -- how big?

22 MR. MORDFIN: It's almost 3,000.

23 COMMISSIONER JEFFRIES: Okay.

24 MR. MORDFIN: Let's see. Then -- but the  
25 one next door is 1206, and that's also 2,946. On the

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1 north side of Ingraham, there's 1203, which is 2,578;  
2 there's 1207 and 9, which have been combined into one  
3 lot. And that is 5,156, although it does have two row  
4 houses sitting on it. And the last one, 1205  
5 Ingraham, is 2,578; which is the same as -- I believe  
6 the two on Jefferson are also -- yes. The two on  
7 Jefferson are also 2,578.

8 COMMISSIONER JEFFRIES: So if -- I mean,  
9 I didn't do any adding here, but if you just looked at  
10 the parcels that face on to Ingraham, I mean, you  
11 might be able to get about what 10,000 square feet?  
12 I mean, I don't know. With the separation of this  
13 alley here? That's an alley? Yes.

14 MR. MORDFIN: Yes. There is an alley  
15 between Ingraham and Jefferson.

16 COMMISSIONER JEFFRIES: Okay. So --

17 MS. STEINGASSER: But -- but I think, with  
18 regard to your concern about whether it precludes  
19 effective retail --

20 COMMISSIONER JEFFRIES: Yes. That's what  
21 I'm trying to get to.

22 MS. MCCARTHY: I think you can draw a good  
23 analogy to the retail districts in upper Connecticut  
24 Avenue where, if you thing about the parking lot  
25 behind the -- what was the Riggs Bank, and is now PNC

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1 Bank at Connecticut, between Morrison and Livingston  
2 or the parking lot behind the CVS at McKinley and  
3 Connecticut, those parking -- and -- and there are  
4 also similarly located -- parking lots in similar  
5 situations around the Nebraska Avenue and Van Ness  
6 areas.

7 Those parking lots are residentially  
8 zoned. They're permitted to be used for -- as  
9 accessory parking for retail uses through a special  
10 exception. The effect that that has is it allows  
11 those retail uses to survive quite well, because they  
12 have adequate parking in the rear.

13 It buffers the residential -- or the  
14 commercial uses from the residential uses that  
15 directly abut that. And it requires the owner of  
16 those parking lots to come back to the BZA on a  
17 periodic basis to make sure that those are operating  
18 without adverse impact on the residential structures  
19 that abut those commercial districts.

20 So, it's -- it actually, I think, could  
21 end up working to the benefit of having -- you know,  
22 it won't -- it won't get us a WalMart on Georgia  
23 Avenue, but we probably don't want a WalMart on  
24 Georgia Avenue at that point in time.

25 It will allow us to have neighborhood

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1 serving retail like video stores and CVSs and banks  
2 and dry cleaners with sufficient parking in the rear  
3 and still not have an adverse impact on the  
4 residential character of the neighborhood.

5 COMMISSIONER JEFFRIES: Yes. Yes, and --  
6 thank you Ms. McCarthy. I -- I guess, you know, I  
7 guess I'm from the school of -- of an anchor here and  
8 there; some national retailer that, you know, really  
9 helps draw to some of the neighborhood serving retail  
10 and the Ma and Pa shops and so forth. And so, that's  
11 the only concern I have about this. And I appreciate  
12 your -- your comments about this. And I appreciate  
13 your -- your comments about -- your comparisons to  
14 Connecticut Avenue.

15 Well anyway, that's -- that's my concern.

16 CHAIRPERSON MITTEN: Can I just pick up on  
17 that thread and maybe take it in a little bit  
18 different direction, which is what is the land use  
19 designation for the C-2-A zoning on Georgia Avenue in  
20 the -- in the blocks 2930 and 2931 squares?

21 MR. MORDFIN: The land use designation on  
22 the Generalized Land Use map?

23 CHAIRPERSON MITTEN: Yes.

24 MR. MORDFIN: It's for mixed use; a  
25 combination of moderate density residential and low

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1 density commercial.

2 CHAIRPERSON MITTEN: So, typically --

3 MR. MORDFIN: Are you sure? It's not?

4 CHAIRPERSON MITTEN: -- you guys give us  
5 a -- a section of the map. So is -- so what you're  
6 saying is that the lots in question that are proposed  
7 for rezoning, those are moderate density residential  
8 only, and then the C-2-A -- or, apart from those, the  
9 C-2-A -- the remaining C-2-A would be mixed? Is that  
10 what we've got?

11 MS. STEINGASSER: That's correct.

12 CHAIRPERSON MITTEN: And what about the --  
13 what about the -- is that true in 2930 also? Is -- I  
14 guess I'm wondering what's happening -- I understand  
15 -- I -- I think I understand the picture in 2931. In  
16 2930, we have the adjacent zoning is R-1-B.

17 MS. STEINGASSER: Right. And the reason  
18 we went with R-3 is that it was more -- more  
19 compatible with the character of the structure. I  
20 don't know the history of this -- of 2930 to know why  
21 that block of row houses is zoned R-1-B.

22 CHAIRPERSON MITTEN: Yes.

23 MS. STEINGASSER: You know, we did a very  
24 quick report. We felt -- we felt that, based on the  
25 neighborhood's desire to set this -- to have this

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1 brought to the Commission as an emergency, we felt it  
2 was necessary to get a report to the Commission, but  
3 we have not had a lot of time to do a lot of research  
4 on the zoning in the neighborhood.

5 We could find some -- a map back to 1966  
6 that did have some of the measurements on it. The  
7 Comp Plan does identify the western side of Georgia  
8 for moderate density residential and the eastern side  
9 for the mixed use, and south of the alley, there's  
10 also mixed use.

11 But recognizing the pattern in the R-3, we  
12 just went with the R-3, requesting a set down for the  
13 R-3.

14 CHAIRPERSON MITTEN: Okay. I'm just --  
15 I'm just a little uncomfortable. And maybe the way to  
16 deal with it is to set down R-1-B in the alternative.  
17 I'm just wondering like why would you shove R-3 in  
18 there on that particular square?

19 MS. STEINGASSER: It's just that they're  
20 not -- they're not -- they're nonconforming to the R-  
21 1-B standards. But then the alternative is a fine  
22 solution while we -- it gives us a chance to look at  
23 that full square and do some research.

24 CHAIRPERSON MITTEN: Okay. Anyone else?  
25 Mr. Turnbull.

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1                   COMMISSIONER TURNBULL:    I just had a  
2                   question on going back to their logic.   On square  
3                   2931, if there had been an alley connecting 1206 to  
4                   1209 similar to what's on the other side of the  
5                   street, would that then -- would you have remained --  
6                   would that area have remained a C-2-A; those lots in  
7                   there?

8                   MS.    STEINGASSER:           I don't know,  
9                   Commissioner Turnbull.   I -- that's a -- that's a hard  
10                  hypothetical to answer.

11                  COMMISSIONER TURNBULL:    I mean, I -- I  
12                  sort of see a pattern that develops on the other  
13                  street; that if you don't have an alley that's  
14                  parallel to Georgia Avenue, that area sort of remains  
15                  C-2-A, and then the rest of it beyond the alley  
16                  becomes -- is either R-3 or R-4.

17                  MS.    STEINGASSER:    Yes. You're correct on  
18                  that point.

19                  COMMISSIONER TURNBULL:    I mean, here you  
20                  have an alley going the other way.   It's perpendicular  
21                  to Georgia and it sort of breaks up the street rather  
22                  strangely there and makes it clear that you either --  
23                  you're either on Ingraham or on -- or on Jefferson.  
24                  And, I mean, is that the way you're looking at it?

25                  MS.    STEINGASSER:    Well, we looked at it

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1 and then we -- the first thing OP does with any kind  
2 of zoning text -- zoning map amendment is go to the  
3 Comprehensive Plan and make sure that it -- that  
4 there's the not inconsistency standard.

5 And in this case, because this portion was  
6 identified for moderate density residential, it did  
7 not include these -- these mixed use striping that  
8 happens south of here, and then again north.

9 We felt it was not inconsistent but, like  
10 I said, we -- we only had like two to three days to --  
11 to get this together.

12 COMMISSIONER TURNBULL: Yes.

13 MS. STEINGASSER: So we will be looking at  
14 that. But I do see the -- immediately, the pattern  
15 you're describing on the west side is quite different  
16 in how that zoning line is distinguished.

17 COMMISSIONER TURNBULL: Well, yes. And  
18 you can sort of see it almost wanting to try to  
19 develop on the other side too. And even on the block  
20 square 2930, this somewhat bigger parking area there.  
21 But you sort of see a pattern developing where the  
22 commercial is sort of, then you've got an alley, and  
23 then residential goes beyond that. And I don't know  
24 if that's part of your logic or what you're looking  
25 at.

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1 MS. STEINGASSER: It will be. Yes. It  
2 will be what we'll be looking at, is -- is how the --  
3 what are the natural boundaries of the commercial  
4 versus the residential in here.

5 COMMISSIONER TURNBULL: Okay

6 CHAIRPERSON MITTEN: Anyone else?

7 COMMISSIONER JEFFRIES: And the emergency  
8 is?

9 MS. STEINGASSER: I believe the  
10 application was filed as an emergency because they had  
11 missed the time -- filing deadline for the Zoning  
12 Commission. We're proposing just a set down; which  
13 would -- which would have its normal testing.

14 MR. BERGSTEIN: I also think the  
15 petitioner was unaware of the set down rule which  
16 would immediately apply the more restrictive R-3  
17 zoning. Or actually, you're going to have to -- if  
18 you do do that in the alternative, then the R-1 would  
19 be what would be the set down zoning, unless you  
20 specifically state that R-3 would apply instead.

21 CHAIRPERSON MITTEN: Okay. Well then, I  
22 would move that we set down Case No. 06-07; which  
23 would be a map amendment for lots 48, 49, 77, 78, 79,  
24 and 94 in square 2931 to R-3, and would be a map  
25 amendment for lots 73 and 74 in square 2930 to R-3 or

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1 R-1-B in the alternative.

2 MR. BERGSTEIN: Sorry. Is it your intent  
3 that, with respect to those lots, that the R-1-B be  
4 the processing zone for --

5 CHAIRPERSON MITTEN: Yes. Is there a  
6 second?

7 VICE-CHAIRPERSON HOOD: Yes. I'll second  
8 it.

9 CHAIRPERSON MITTEN: Mr. Hood.

10 COMMISSIONER JEFFRIES: Excuse me. Mr.  
11 Bergstein, when you said the processing, do you mean  
12 that would be the one that would be published and then  
13 R-3 would be the alternative?

14 MR. BERGSTEIN: No. It would mean that,  
15 with respect to those lots, that R-1-B is in the  
16 alternative. If anyone were to apply for a building  
17 permit during the pendency of this proceeding, the  
18 Zoning Administrator would consider that R-1-B would  
19 be -- was the zone district in place.

20 Under the set down rule, once you decide  
21 to set down a zone district for hearing, and it's more  
22 restrictive than the current zone district, then as a  
23 matter of processing, any building permit applications  
24 that are filed after today would be processed in, of  
25 course, the more restrictive zoning.

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1 CHAIRPERSON MITTEN: Any more discussion?  
2 All of those in favor, please say aye.

3 ALL: Aye.

4 CHAIRPERSON MITTEN: Those opposed, please  
5 say no. Ms. Schellin.

6 MS. SCHELLIN: Staff will record the vote  
7 five to zero to zero to set down Case No. 06-07 as  
8 discussed. And, let's see, Commissioner Mitten moved;  
9 Commissioner Hood seconded; Commissioners Jeffries,  
10 Parsons, and Turnbull in favor. And I just want to  
11 confirm that all three of the cases that we've taken  
12 hearing action on are rule making cases.

13 CHAIRPERSON MITTEN: Is the map amendment  
14 a rule making, Mr. Bergstein?

15 MR. BERGSTEIN: I think in this instance  
16 it is.

17 CHAIRPERSON MITTEN: Okay.

18 MR. BERGSTEIN: I mean, it's your -- it's  
19 -- it could be read as either, but a map amendment can  
20 be either a rule making or a contested case. In this  
21 case, it's not being brought by the property owner.  
22 It's being brought by citizens, in order to achieve a  
23 variety of goals. And I think it's more appropriate  
24 for you -- you can I think legally find it to be a  
25 rule making proceeding.

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1 CHAIRPERSON MITTEN: Okay. Okay. Does  
2 anyone object to that being a rule making? Okay.  
3 Okay. All three are rule makings. Thank you for the  
4 clarification.

5 And the last case was -- which was really  
6 on here just for us to be reminded is Case No. 05-02;  
7 which, if you recall, we had taken -- I guess we had  
8 taken proposed action on the case and the Office of  
9 Planning was going to come back to us and we had said  
10 we were going to take it up in February. So, it's a  
11 status call.

12 MS. STEINGASSER: It is a status call.  
13 And we apologize. Between the emergencies, we -- we  
14 just kind of ran out of -- we ran out of time for the  
15 mundane. So we will be getting that to you in March.

16 CHAIRPERSON MITTEN: Okay. I really -- I  
17 think -- I think we'll have to take it back up in  
18 March if we don't -- if we don't hear -- just because  
19 it -- you know, people are hanging out there. So  
20 let's all be committed to that. Thank you.

21 Okay. Now we're ready for Proposed  
22 Action. And the first case before us for proposed  
23 action is Case No. 05-36. And this is the proposal  
24 for 200 K Street N.E., which is a PUD and related map  
25 amendment. And we have a number of additional

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1 submissions that we received in response to our  
2 requests at the hearing. And then we had a  
3 supplemental report from the Office of Planning. And  
4 then we had a response from the Applicant. And we  
5 have a proposed order, as well.

6 COMMISSIONER PARSONS: Madam Chairman, I  
7 was unfortunately unable to attend the hearing on this  
8 case and the next two cases. So I will not be  
9 participating in those.

10 CHAIRPERSON MITTEN: Okay. I'm sorry  
11 about that. But, would you like time to read the  
12 record? Just kidding.

13 Are there comments, or shall I dive in?  
14 Okay. There are a variety of things that I think we  
15 need to talk about. And I'll -- I'll try and take  
16 them in -- in categories.

17 One has to do with the affordable housing  
18 proffer. We have a proposed covenant from the  
19 Applicant. And the covenant seems to embody a lot of  
20 what was being proffered. But the order itself does  
21 not. So I don't know -- I really don't know what was  
22 intended.

23 I think we have to get clarification on  
24 what precisely is being proffered in the context of  
25 the order. Because, if you'll note on page 28,

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1 condition number 8, and page 30, condition number 17,  
2 certain aspects of the affordable housing proffer are  
3 captured, but not all aspects of the affordable  
4 housing proffer are captured.

5 There's also what was, in terms of -- we  
6 -- we discussed, if you recall, with the Applicant the  
7 distribution of the units within the project and the  
8 size of the units relative to the market rate units.

9 The Applicant is proffering the affordable  
10 units only on the lower and middle floors; not on the  
11 upper floors. And the units are similar, but not  
12 identical in size and they are generally somewhat  
13 smaller.

14 If you recall, we had a discussion, I  
15 guess it was last week, on inclusionary zoning, about  
16 what -- what degree of variability we wanted to see in  
17 terms of sizes when we were looking for comparable  
18 size.

19 And I think all of this becomes especially  
20 important, depending on how we view the -- the use of  
21 the bonus density to achieve the proffered amenity at  
22 the level that it's being achieved.

23 I appreciated the Office of Planning sort  
24 of really taking a hard look at what was my concern,  
25 which was that I -- I definitely don't want to see

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1 applicants using the five percent bonus density that's  
2 available to justify proffers.

3 In this case, I think, with the guidance  
4 from the Office of Planning, we have -- we have a  
5 situation where the Applicant is going above and  
6 beyond the minimum, using that bonus to have an  
7 amenity that's especially notable and sizeable.

8 And it's sort of in that context that I'm  
9 also thinking about the fact that whether or not we  
10 want full distribution of the affordable units  
11 throughout the project and things like that. Because  
12 we are -- you know, they are sort of taking it above  
13 and beyond, so let's be fair about the minimums that  
14 we've tried to establish in terms of seeking  
15 affordable housing. So -- so there's that aspect of  
16 it.

17 There's -- there's a couple of things that  
18 they walk through in -- well, let me deal with another  
19 issue first. In the list of amenities that start on  
20 page 50 -- I'm sorry, it starts on page 11. It's  
21 number 50, I'm sorry. That's where they -- that's  
22 where they -- the letter A is what they've proffered  
23 to us in the case, and so on. But that proffer of  
24 affordable housing doesn't translate into a condition.  
25 I think we have to be clear that that was their

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1 intent.

2 We have, on letter -- well, there's the  
3 daycare center; which is captured in condition no. 18.  
4 We have the green roof; which is the letter C on page  
5 12; which is captured in condition no. 21, and perhaps  
6 elsewhere.

7 But one of the things that troubles me  
8 about the green roof is that, if you look at -- this  
9 is now on page 30, condition no. 21, letter B, they're  
10 asking for flexibility as to the size of the green  
11 roof. So, on the one hand, they're proffering a green  
12 room of a certain size, then they're asking for  
13 flexibility. That doesn't comfort me.

14 Then there's the ground floor retail  
15 height. There's the landscape central plaza which I  
16 think there are -- it's -- it's -- the plaza itself  
17 and the guarantees of public access, which they  
18 elaborate in one of their submissions is again not  
19 captured in the conditions.

20 When you get down, in terms of the  
21 proffered amenities to -- this is on page 12, to  
22 letter G, they're suggesting that the interim surface  
23 parking for phase one residents is an amenity.

24 I would argue that that is not an amenity;  
25 that is -- that offsets potential adverse impacts from

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1 not having the parking in place until the entire  
2 project is completed.

3 So those are -- again, I think one is just  
4 my view of the interim parking. The other is we're --  
5 we're not seeing the nexus between the proffer as it's  
6 described in the findings of fact and the conditions  
7 that are, in fact, being proposed to us.

8 And then there's a couple of -- of --  
9 well, there's one issue, I guess, that I would like to  
10 raise that the Office of Planning had recommended to  
11 us that I think is worthwhile; which is in -- this is  
12 in -- on page 18 in finding of fact 60. I'm sorry.  
13 That's not right. Page 16, finding of fact 59, which  
14 is that the Office of Planning had recommended that,  
15 for the -- for the first stage PUD, that when they  
16 come back for second stage, that they would study the  
17 height issue and submit an alternative that shows a 90  
18 foot building height along K Street with a setback at  
19 40 feet.

20 And I'm -- that's actually something that  
21 I'd be interested in. Because as you can see from our  
22 additional submissions, you know, these buildings are  
23 going to be quite high. And I think, especially along  
24 K Street where it's facing single family dwellings to  
25 the south, I know that the issue is not necessarily

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1 shadows; I think it's just massing. But that is  
2 something I'd like to have revisited. The Applicant  
3 is suggesting that that's something that they don't  
4 want to do. So those are just kind of a -- a dumping  
5 of the issues that I -- that I saw as outstanding.

6 COMMISSIONER JEFFRIES: Yes. Madam Chair,  
7 I had some difficulty getting through a lot of this  
8 because it was just hard to -- there were certain  
9 things in certain places and I couldn't get everything  
10 sort of on that one page. And I think, you know, a  
11 lot of what you've said is really captured that.

12 All right. I have a question for the  
13 Office of Planning. Is the whole notion -- I'm trying  
14 to -- and I don't have the -- their hearing statement.  
15 But I'm trying to get a sense. What was the increased  
16 -- what's the increased density that they're giving to  
17 this PUD? What's the matter of right versus -- I'm  
18 just trying to get the deal to.

19 MR. COCHRAN: Okay. The -- because  
20 they're a split zone, the blended matter of right FAR  
21 would be 5.4. And they're asking for 8.4. So they're  
22 getting an additional three FAR, if you grant that.

23 COMMISSIONER JEFFRIES: Okay. Which  
24 translates into what kind of FAR -- I mean square  
25 footage?

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1 MR. COCHRAN: Well, let's see. Matter of  
2 right would be 540,700. They're looking at 849,338.

3 COMMISSIONER JEFFRIES: Okay.

4 MR. COCHRAN: So roughly 300,000 -- three  
5 FAR and three and some change -- 300,000 and some  
6 change in square footage.

7 COMMISSIONER JEFFRIES: What was -- what  
8 was your concern about the height? What -- I mean --  
9 sorry. What's -- what's your thoughts about what's  
10 being proposed here in terms of height, at this 130?

11 MR. COCHRAN: We just --

12 COMMISSIONER JEFFRIES: Given the context  
13 --

14 MR. COCHRAN: Do you mean what our  
15 suggestion about the 90 foot along K Street?

16 COMMISSIONER JEFFRIES: Yes.

17 MR. COCHRAN: Okay. We understand that  
18 the -- that the PUD has -- and, in it's previous PUD's  
19 condition, had a long history of being approved at 130  
20 feet along Second Street. However, we've listened to  
21 the neighborhood. Although they haven't voted to say  
22 anything about the height along K Street, there was  
23 some concern about trying to step down from Second  
24 Street to Third Street. That's also one of the  
25 concerns about the -- the NoMA Plan that is now being

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1 developed.

2 So we were looking for something that  
3 made, in effect, a genuflection to the idea of  
4 continuing the step down. The 90 foot height would be  
5 only to a 40 foot depth. Then it would go up  
6 presumably, in what we were asking for, to 130 feet.  
7 But there would at least be a uniform line maintained  
8 with the 90 foot height that is part of the  
9 consolidated PUD.

10 And we were simply asking the Applicant to  
11 look at some sort of amassing study or design that  
12 could do that. It's possible that the Applicant might  
13 come back with something where there are bays at  
14 certain parts of the design that maintain the 90 foot,  
15 and then you have the wall rising behind it that goes  
16 straight to 130 feet.

17 We didn't want to design the building for  
18 them. We just wanted to see what the -- what it would  
19 look like and what the impact would be on the project  
20 if they tried to maintain a lower height for a certain  
21 depth along K Street.

22 COMMISSIONER JEFFRIES: So, was the --

23 MR. COCHRAN: And not necessarily even all  
24 of K Street.

25 COMMISSIONER JEFFRIES: Okay. So was the

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1 driver just really the recommendations of this step  
2 back from the NoMA review? Or -- I mean, and -- and  
3 when did that occur?

4 MR. COCHRAN: First, we heard certain  
5 community opposition that didn't get formalized. But  
6 we certainly got a -- you know, a few phone calls; a  
7 few e-mails. And then, the other thing is just the  
8 consideration that's been coming up through the --  
9 through the NoMA study; which didn't really come about  
10 until the Fall. Which that would have been towards  
11 the end of the previous PUD process.

12 COMMISSIONER JEFFRIES: Okay. And let me  
13 -- how does this -- how does the height and the bulk  
14 -- the density of this project jive with the Senate  
15 Square; the Abdow Project? First of all, how far is  
16 that from this location?

17 MR. COCHRAN: One full block north of it.  
18 There's a -- there's a square to the south that has a  
19 small street that runs east/west. And those are  
20 generally small row houses in there. And Senate  
21 Square is a full square to the south of the  
22 Applicant's site.

23 COMMISSIONER JEFFRIES: So, if you were to  
24 do a bird's eye view, volumetric, and look at this  
25 universe, between what's being proposed at 200 K and

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1 Senate Square, I mean, does this -- this project look  
2 out of line in terms of height?

3 MS. McCARTHY: The maximum height on  
4 Senate Square is 110 feet. Right? On the new  
5 construction?

6 MR. COCHRAN: I'm not sure. I -- I didn't  
7 bring those -- I did not bring those with me.

8 MS. McCARTHY: I believe the maximum  
9 height is 110 on the -- on the new construction. And  
10 then there's historic buildings which are 50 or 60.

11 COMMISSIONER JEFFRIES: Why am I  
12 remembering 118 with some roof -- with some roof  
13 embellishments or something. I don't -- I don't  
14 recall. Okay. But whether it's 110 or 130, I'm just  
15 trying to get a sense of the height that is being  
16 introduced in this area and with this project sort of  
17 appear.

18 MR. COCHRAN: The 130 feet, obviously, is  
19 congruent with the way that the case had been for so  
20 long in it's previous iterations. It's also congruent  
21 with what you can get just across the tracks in the C-  
22 3-C zone.

23 COMMISSIONER JEFFRIES: Thank you.

24 CHAIRPERSON MITTEN: Anyone else? Mr.  
25 Turnbull?

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1 COMMISSIONER TURNBULL: Madam Chairman, I  
2 just had -- getting back to the height issue. In  
3 looking at the recent drawings, my -- my concern, and  
4 it depends on the latest, if I look at some other --  
5 other elevations, actually reveal that the height  
6 along Second Street almost to be about 143 feet.

7 And it looks like they're measuring back  
8 from the Consolidated PUD grade, back on Second.  
9 Which, to me, I think is disingenuous to what you're  
10 trying -- to what you're actually looking at.

11 And I think it -- it really -- it really  
12 speaks that it's really even a larger project. It's  
13 got another floor -- we -- we thought we were going  
14 lower and getting the 14 floors. It looks like that  
15 that really hasn't gone away. That it's really there.  
16 And it's still 15 floors.

17 So I -- I -- yes. But I mean, I don't  
18 know if you've looked at the recent elevations. But  
19 it's -- the measurement is not longer 130 feet from  
20 grade, as it showed on the original submission. It's  
21 130 feet from a point somewhere measured from --  
22 either on Second Street or further down the road.

23 So you've really got another 14 foot,  
24 three inches that you're adding on to the 130 feet.

25 MR. COCHRAN: Did you want me to address

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1       that?

2                   COMMISSIONER TURNBULL:   Yes.

3                   MR. COCHRAN:   Okay.   With -- let me start  
4       with what actually seems to be the easier part.   And  
5       let me also ask Jennifer -- Senate Square goes up to  
6       100 and what feet?   Do you remember?   Okay.   I'm  
7       sorry.

8                   With respect to the number of stories, you  
9       -- you asked for the Applicant to -- to take the  
10      building down to 14 stories.   It's 110?   Okay.   Okay.  
11      Yes.   Senate Square's 110, so this would be taller  
12      than Senate Square.

13                  It does appear that, unless we're using  
14      the European system of counting floors, where the  
15      second floor is the premier eatage, it does appear  
16      that the Applicant build -- Applicant's building would  
17      count at 15 floors, if you were looking at it from  
18      Third Street in the new drawings.   Excuse me, from  
19      Second Street in the new drawings.

20                  The Applicant has taken the measuring  
21      point of I think it's roughly 56 feet where they  
22      measured the height over on Third Street and brought  
23      that across the site to Second Street, and then said  
24      there are 14 stories above that.

25                  There is a full story plus a few feet.

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1 It's roughly, I think, 13 feet below that measuring  
2 point that certainly to a typical person not trained  
3 in all of the ins and outs of zoning would look like  
4 a story.

5 Now, with respect -- so that's one thing.  
6 Because stories are different that -- than height. If  
7 you're actually measuring the height, there seem to be  
8 a history. Certainly, we've gone back to a -- an --  
9 a corporation counsel ruling back in 1950, where you  
10 measure -- you can measure the zoning height at one  
11 point, but then -- so that you establish a class of  
12 buildings -- a class of height, rather than the  
13 building goes into for Height Act purposes and for  
14 Zoning Regulation purposes.

15 And then, there's another provision that  
16 allows you to determine where you're actually going to  
17 measure your height from. Section 5 of the Height Act  
18 establishes this class of buildings that allows you to  
19 get to 130 feet; and it defines it as being determined  
20 by the width of the street, except -- unless something  
21 isn't on a business street.

22 In this case, K Street is 147 feet wide;  
23 which clearly indicates that a building could get into  
24 the class of buildings that would be 130 feet. Then,  
25 in Section 7, you get into well how is it going -- how

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1 is that height actually going to be measured?

2 It says that you measure it from the  
3 street that would give the greater height. In this  
4 instance, the Applicant, it seems to us, is free to  
5 choose which street would give the Applicant the  
6 greater height; which would be Third Street. You take  
7 the midpoint on Third Street and there you are at 56  
8 in height.

9 We've seen this several times around the  
10 city where you have different measuring points for  
11 different purposes in the city. We can even go back  
12 to the predecessor law to the 1910 Height Act; which  
13 was one that was around in I believe it was 1899;  
14 where they said you measure -- you can then, after  
15 you've determined how high your building -- what class  
16 of height your building's going to be in, then you can  
17 go ahead and choose to measure it from wherever you  
18 have the steepest grade. Which clearly indicates  
19 they're giving the advantage to somebody to choose  
20 different points for different purposes.

21 CHAIRPERSON MITTEN: Is there a -- do you  
22 have any difference of opinion with the Applicant  
23 about the -- about the manner in which they've  
24 measured?

25 MR. COCHRAN: As far as height? No.

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1 CHAIRPERSON MITTEN: Right.

2 MS. DICKENS: As far as stories, probably.

3 CHAIRPERSON MITTEN: Okay. So -- so we  
4 don't have any difference -- we don't have any  
5 difference of opinion about how the Height Act has  
6 been interpreted?

7 MR. COCHRAN: Within the District  
8 government, no we don't.

9 CHAIRPERSON MITTEN: Do you have any --  
10 and do we --

11 MR. COCHRAN: And with the Applicant, we  
12 don't.

13 CHAIRPERSON MITTEN: We don't? Okay. So  
14 the issue then, I take your point about the number of  
15 stories, is another matter -- or may be another  
16 matter. But, technically speaking, they're within  
17 their maximum.

18 Now the Zoning Commission is free to  
19 reduce from maximum -- what's maximum permitted, in  
20 the context of a PUD, if you have an issue with the  
21 height overall.

22 COMMISSIONER TURNBULL: Oh. I guess -- I  
23 guess I'm just hearing one thing, but I'm also hearing  
24 that they have a concern on K Street with height. And  
25 I'm wondering how that plays, looking at how they're

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1 measuring height from that standpoint to what your  
2 concerns are on K Street and how you see 90 feet,  
3 relating to --

4 MR. COCHRAN: The Office of Planning's  
5 concern with height on K Street does not have anything  
6 to do with the Height Act. It has to do with how does  
7 the building fit in.

8 COMMISSIONER TURNBULL: I'm not worried  
9 about the Height Act.

10 MR. COCHRAN: Okay.

11 COMMISSIONER TURNBULL: I'm talking about  
12 your concern about height and how you see the height  
13 of the building relating along K Street.

14 MR. COCHRAN: We would like to see more of  
15 a transition from the 130 foot height on Second Street  
16 over to the height that extends back within the  
17 Consolidated PUD of 90 feet from the corner of Third  
18 Street back in. So we would like to see the phase two  
19 --

20 COMMISSIONER TURNBULL: So you're saying  
21 the 90 feet as measured from Third Street, carried  
22 along K Street elevation?

23 MR. COCHRAN: I'm sorry. I -- I didn't  
24 understand your question.

25 COMMISSIONER TURNBULL: If the

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1 Consolidated PUD that's right now on K Street and  
2 Third is at 90 feet.

3 MR. COCHRAN: Yes.

4 COMMISSIONER TURNBULL: As measured from  
5 that intersection; that corner -- wherever that is --

6 MR. COCHRAN: Yes.

7 COMMISSIONER TURNBULL: You'd see that  
8 being carried all the way along K Street? That would  
9 be your druthers?

10 MR. COCHRAN: We would -- no. We would  
11 like to see a design study.

12 COMMISSIONER TURNBULL: Okay.

13 MR. COCHRAN: We don't feel that we have  
14 enough information to actually make a firm  
15 recommendation.

16 COMMISSIONER TURNBULL: Fine.

17 MR. COCHRAN: We would like to see it  
18 explored.

19 COMMISSIONER TURNBULL: Thank you.

20 CHAIRPERSON MITTEN: Well, and just to  
21 flesh that out, I think, to the extent that the  
22 Commission feels that that's worth doing, I think it's  
23 better to put the Applicant on notice in this context,  
24 then to have them come back with a second stage  
25 submissions. And then say it, after they're down the

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1 road. So, you know, that's why we need to decide if  
2 that's something that's going to be included.

3 MR. COCHRAN: But I would like to  
4 emphasize that it's not -- we're not even saying you  
5 have to study it for anything more than the first 40  
6 feet in depth.

7 CHAIRPERSON MITTEN: Correct.

8 MR. COCHRAN: Okay.

9 CHAIRPERSON MITTEN: Thank you. Well,  
10 where I'm at is we need -- I don't know -- I don't  
11 know how to approach it exactly. I think what we need  
12 is -- based on what we have, the order that we have in  
13 front of us, there -- we -- we're not getting the  
14 connection between what's been articulated as the  
15 proffer and what the Applicant is binding themselves  
16 to through the condition.

17 We had -- when I had asked -- I think it  
18 may -- it was -- perhaps it was me, in asking for the  
19 covenant, I had asked for the mechanism by which they  
20 would enforce the affordable housing restrictions, but  
21 I didn't -- that wasn't a substitute for it. I just  
22 wanted to be clear about that.

23 So, what I would suggest is, based on the  
24 comments that we articulated, and I'd like to hear a  
25 couple of other people about the distribution of the

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1 affordable units and so on, is we need some  
2 clarification, and we can take this up at a special  
3 public meeting, but we need some clarification between  
4 -- about the proffer that's related to the public  
5 plaza and the functionality of that and whether it's  
6 going to be gated or how it will be open to the public  
7 an so on.

8 We need -- we need more specificity in the  
9 conditions about the affordability restrictions; how  
10 long they'll last, what degree of affordability is  
11 being offered; the number of units, and so on.

12 I, for one, need -- now need some  
13 clarification about what exactly the green roof  
14 proffer is, because they're asking for flexibility on  
15 size without any limitation as to how low it could be  
16 reduced. And I certainly would want to push for the  
17 inclusion of the design study that the Office of  
18 Planning had suggested.

19 I don't know where other people are, but  
20 that's where -- that's where I think we need to be.  
21 Because, otherwise, we're imposing on the Applicant  
22 things that perhaps they are not, in fact, proffering.

23 VICE-CHAIRPERSON HOOD: Madam Chair, I  
24 think the -- when you mentioned about the affordable  
25 housing component, you weren't necessarily asking for

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1 a separate agreement, were you? Or it should have  
2 been specified or talked about here in the order or  
3 the decision.

4 CHAIRPERSON MITTEN: Well, among the  
5 things that they need to articulate is if they're  
6 proffering a covenant, it's that they need to say that  
7 they will enter into a covenant, a copy of which is  
8 attached, but they -- we need to have in our order the  
9 number of units that will be affordable; the degree of  
10 affordability that's being offered; how long the  
11 affordability period will last; and then, the last  
12 piece of that is and what's the mechanism for insuring  
13 that the affordability remains in place during the --  
14 the period that it's intended to apply.

15 VICE-CHAIRPERSON HOOD: The only other  
16 thing. Thank you for clarifying. The only other  
17 thing I'll mention that's in the order on page 13; it  
18 talks about the plaza will be open to the public from  
19 11:00 a.m. to 7:00 p.m.; and that's accessible through  
20 a gate. But I'm wondering what are the hours for the  
21 Union Place residents. Is it 24/7? You know, I don't  
22 think that's spelled out. And I'm not sure if that  
23 was even mentioned during the hearings.

24 I thought it was open from 11:00 a.m. to  
25 7:00 p.m. for everybody. But obviously, the way it's

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1 written here in the order, after 7:00 p.m., it's still  
2 open to the residents. Which is okay, but I think we  
3 need to narrow that scope down at some point. Is it  
4 24 hours, or what?

5 CHAIRPERSON MITTEN: Well, and -- but, to  
6 take -- your point's a good one. But also then,  
7 what's -- that was what was articulated as what was  
8 being proffered as what you just read from Page 13,  
9 letter E. But that was not offered as a condition.

10 So, you know, we need to be clear. What  
11 is it that the Applicant is intending to encumber  
12 themselves with. So I think that your point could be  
13 clarified if they -- if they expand on the conditions.

14 VICE-CHAIRPERSON HOOD: The conditions.  
15 Okay.

16 COMMISSIONER JEFFRIES: Okay. So, I mean,  
17 Madam Chair, what's -- I mean, we're dealing with some  
18 process; some -- you know, we're trying to, you know,  
19 have the delineated correct information so we're clear  
20 about what's being proffered so that we can actually,  
21 you know, make an opinion -- make a decision here.

22 CHAIRPERSON MITTEN: Yes. Right.

23 COMMISSIONER JEFFRIES: I guess what I --  
24 I do want to, you know, make clear. I just want to  
25 understand from the rest of the Commissioners, I mean,

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1       how do you feel about some of the more substantive  
2       issues around, for example, height?

3               I mean, Madam Chair, I think I understand  
4       where you are. But I would like to get a sense from  
5       the other Commissioners about some of the larger  
6       aspects of this. Because, I mean, I'd like to see  
7       this thing get put to bed sooner or later. I know we  
8       all do. And I haven't even been dealing with it as  
9       long.

10              But I just want some clarity here. So I  
11       just want to get a sense from, you know -- and I think  
12       I perhaps know where Commissioner Turnbull is. But I  
13       just -- some of the substantive issues tied to this  
14       PUD I'd just like to hear from -- from you so that,  
15       you know, the Applicant is here; they have something  
16       to go with.

17              CHAIRPERSON MITTEN: Are you lacking in  
18       clarity about how I feel about the height issue?

19              COMMISSIONER JEFFRIES: I am never lacking  
20       in clarity from where you stand, Madam Chair.

21              CHAIRPERSON MITTEN: Okay. So, it's down  
22       to you guys. He'd like to hear something from you.

23              COMMISSIONER TURNBULL: Well, I think  
24       you've expressed a lot of the concerns that we've all  
25       had. And I think we do need more information. And I

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1 would back the Chairman for asking for that  
2 information so that we could make a better -- at least  
3 understand more clearly, what -- what is being offered  
4 and what we're -- what we're agreeing to.

5 VICE-CHAIRPERSON HOOD: The only think I  
6 would add to that, and this may sound kind of  
7 contradictory, but as far as the information that we  
8 get, and I would like sound bite information, let's  
9 get right to the point.

10 I'm not -- I mean, this is a lot of work  
11 that went into the submittals. If we can get to that  
12 point, that makes it a lot easier for the  
13 Commissioner, since you asked.

14 Normally, nobody asks me for my opinion.  
15 But since you asked, I would say to the Applicant,  
16 from my standpoint, I mean, you're going to do what  
17 you have to do to get your case across, but if you  
18 making a sound bite information, this is well -- it's  
19 well done and documented to a point. But it's -- it's  
20 -- I'm not going to say it's all over the place.

21 But, for example, we talked about the  
22 agreement about affordable housing. It could have  
23 been in the order, as opposed to a separate agreement;  
24 if I understand where the Chair is coming from. Then  
25 that way I know to look in one place.

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1 CHAIRPERSON MITTEN: Well, it doesn't bind  
2 the Applicant if it's not in the order.

3 VICE-CHAIRPERSON HOOD: Not in the order.  
4 Right.

5 CHAIRPERSON MITTEN: It's not in the  
6 conditions of the order. It's one thing to put it in  
7 a finding of fact. It's another thing to put it in  
8 the conditions.

9 I think, by and large, what we're looking  
10 for is a revised decision part. So pages -- page 26  
11 and following, that's where we need additional work  
12 done, by and large. We still have the issue about  
13 doing the study on the height for the second stage --  
14 the second stage component of the PUD. And we can  
15 debate that further when we, you know, when we take a  
16 final vote.

17 I think, just to -- just to put my own  
18 views out there about the one other significant  
19 substantive issue that I see; which is about the  
20 distribution of the affordable units, and so on, is I  
21 think, and I feel very strongly about this, especially  
22 because they're using the bonus FAR to achieve this --  
23 this amenity, is that we should have full distribution  
24 of the affordable units throughout; and that we expect  
25 that, consistent with what we voted on IZ last week,

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1 that there be a sort of maximum degree of variability  
2 in unit size of five percent -- no -- so the  
3 affordable units can be no smaller than 95 percent of  
4 the comparable market rate unit. So that we -- so  
5 that we start to sort of establish these as baseline  
6 standards for affordable housing proffers. That's  
7 what I would like to encourage.

8 COMMISSIONER JEFFRIES: And my fellow  
9 Commissioners, I mean, that's sort of what I was  
10 trying to get to. I mean, I clearly -- I think we all  
11 understand that there needs to be greater, you know,  
12 clarity in terms of what's being proffered.

13 My questions was really around -- even  
14 beyond that. I mean, as Madam Chair just spoke about,  
15 you know, she's concerned about, you know, just how  
16 the affordable units will be allocated within the  
17 building. I mean, that's -- that's sort of a  
18 substantive issue around this -- this application.

19 And that's what I was getting to. I mean,  
20 I also understand the sense of height -- there's  
21 concern of height. I was just trying to get some  
22 sense about how you feel about the more substantive  
23 issues of this application that perhaps the Applicant  
24 can look at. So it's not just about the Applicant  
25 going back and being very clear about what's being

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1 proffered, but they also have some sense about where  
2 the Commission is moving in terms of this; the merits  
3 of the application. That's all I was going for.

4 VICE-CHAIRPERSON HOOD: Well I will tell  
5 you that I think the Chairperson early on, when she  
6 first started her comments, I would have to associate  
7 myself with her to a point.

8 I don't know if I necessarily agree right  
9 yet on the distribution and I got to -- we've got to  
10 revisit that. And I'm sure, at the proper time, we'll  
11 discuss that. Especially, I want -- we want to be  
12 consistent in what we're doing with the IZ and others.

13 But I don't know quite yet on this case if  
14 I'm there with her yet on that. But I think she  
15 expounded on a number of issues which -- which would  
16 be good for acting on. And I really don't have a lot  
17 of these. I just need to see it, from my standpoint,  
18 in a specific area or place, if you follow me.

19 COMMISSIONER JEFFRIES: Well, let me add.  
20 I -- for me, you know, I am absolutely, as many people  
21 know, a strong supporter of as much housing as  
22 possible in the District. And so, I am -- am not at  
23 all bothered with the -- the 130 foot height.

24 I do think it would be a good exercise for  
25 the Applicant to take a look and see what happens with

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1 90 feet along K Street. But given the -- from what I  
2 gather, some of the proffers that are going to come  
3 from -- from this application, once we get clarity on  
4 that, I would be comfortable with the height.

5 I do share Madam Chair's concern about  
6 disbursement of the affordable units. Again, I am  
7 very concerned about segregating units within the  
8 confines of the building. You know, I'd just like to  
9 see -- and perhaps maybe different parts of the floor.

10 I don't know how to do this. And I  
11 clearly understand the economic issues, but I -- I  
12 don't want it to be understood in the building that,  
13 you know, the affordable -- the affordables live on  
14 floors one through five. I mean, I -- I don't think  
15 that really is in the spirit of what we're trying to  
16 do.

17 And then also my other issue is this park  
18 and I really need to understand, with clarity, as to,  
19 you know, how this is going to be a proffer to the  
20 overall community. The general context of this  
21 project as well as the -- the actual residents. I  
22 just need clarity on that piece.

23 And that's because I think that's a very,  
24 very important proffer. I mean, given all of the  
25 density that's going up and so forth, I think it would

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1 be wonderful to have a very nice green space, but I  
2 need to be very clear that -- I need to understand  
3 sort of, you know, how that is being -- how that  
4 benefit is going to be shared; not only for the  
5 residents, but those outside.

6 So that's my input.

7 CHAIRPERSON MITTEN: Thank you, Mr.  
8 Jeffries. Anyone else? What I'd like to suggest that  
9 we do then is -- and we may have a couple of cases to  
10 put on, but that we schedule a special public meeting  
11 for the 23rd before our hearing; which is ten days  
12 from now, is our next hearing night. And then, if the  
13 Applicant has made additional submissions by then we  
14 could take this up and anything else that might carry  
15 over.

16 So I know that they were -- there was some  
17 sense of urgency related to this case. So we could  
18 just keep things moving and not lose any significant  
19 amount of momentum.

20 VICE-CHAIRPERSON HOOD: Madam Chair, I'm  
21 looking here at the title. This is the first -- we're  
22 in the first stage with this?

23 CHAIRPERSON MITTEN: There's a  
24 consolidated portion and a first stage portion.

25 VICE-CHAIRPERSON HOOD: First state. Now

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1 the height issue's on the -- that's the first stage?

2 CHAIRPERSON MITTEN: The height issue is  
3 on the first -- I mean they both have --

4 VICE-CHAIRPERSON HOOD: So we can revisit  
5 that --

6 CHAIRPERSON MITTEN: Correct.

7 VICE-CHAIRPERSON HOOD: At a later time.

8 CHAIRPERSON MITTEN: And that was the  
9 point of debate was the Office of Planning was sort of  
10 suggesting that we require a study when they make  
11 their second stage submission to show us what's 130  
12 feet look like, as they have shown us and what does  
13 130 feet look like with a 90 feet set back up to, you  
14 know, 40 feet of depth? What does that look like? So  
15 that we could compare those at that time.

16 VICE-CHAIRPERSON HOOD: All right. Thank  
17 you.

18 CHAIRPERSON MITTEN: Okay. So we'll defer  
19 this pending some additional information from the  
20 Applicant until the 23rd at 6:00 p.m.

21 The next case is Case No. 05-18, which is  
22 the Hope 7 Monroe Street limited partnership.

23 COMMISSIONER JEFFRIES: Madam Chair, I  
24 won't be participating in this one.

25 CHAIRPERSON MITTEN: Okay. Oh, that's

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1 right. Okay. If you want to go keep Mr. Parsons  
2 company, I'm sure he'd appreciate it.

3 Okay. This is -- if you'll recall, this  
4 is for a planned unit development at 1020 Monroe  
5 Street. It's called the Sage.

6 The challenge here is a little bit  
7 different than the challenge in the last case; which  
8 is, it's certainly in an Applicant's prerogative not  
9 to submit a proposed order. But we don't have draft  
10 proposed conditions, so that we don't have -- we don't  
11 have a formal statement from the Applicant about what  
12 their amenities are and then the conditions that would  
13 bind the Applicant.

14 So we're going to need that. Otherwise,  
15 we'll have to make them up. And it's not our -- it's  
16 not our job to make up what the proffer is. So we're  
17 going to need an additional submission from this  
18 Applicant also before we can take this up.

19 Did you want to say something, Mr. Hood?

20 VICE-CHAIRPERSON HOOD: Can we encourage  
21 them to maybe give us a proposed order. I mean, just  
22 encourage them, if possible. I think we did that in  
23 the past.

24 CHAIRPERSON MITTEN: Well, it would  
25 certainly expedite getting the order published if they

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1 -- if they do that.

2 VICE-CHAIRPERSON HOOD: Yes. You may want  
3 to do that to speed it along.

4 CHAIRPERSON MITTEN: Yes. I just wanted  
5 to comment on a couple of things. One is that I -- I  
6 tried to read this carefully so if it's -- if it -- if  
7 it's articulated in this agreement and I just don't  
8 see it, then somebody should just point it out to me.  
9 And I don't know if the Office of Planning has any --  
10 any information on this.

11 But I read what they had -- they had said  
12 that the agreement with the Tenants' Association was  
13 what bound them to this affordability requirement.  
14 And I don't see that in the agreement. But, as I  
15 said, I would be happy to have it pointed out to me.  
16 But I tried to read it carefully.

17 So that remains an outstanding question,  
18 at least in my mind. And then the other thing that I  
19 guess I would caution them about when they -- when  
20 they proffer whatever the amenities are is, because I  
21 remember that we were -- that we discussed that they  
22 were suggesting that offering office space to the ANC  
23 was going to be an amenity.

24 But the proposed terms that they've  
25 suggested at \$30.00 per square foot, triple net, don't

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1 strike me as any kind of bargain. So I'd just be  
2 curious about why that's considered to be an amenity.  
3 But, primarily what we need to see from them is a  
4 written list of what are their stated amenities and  
5 what are the conditions that they're proposing for the  
6 order.

7 And if there's any -- any other issues  
8 that anyone would like to point out? Any other?  
9 Okay. So we'll put that on. If they can get us a  
10 response, we'll put that on for the 23rd as well, at  
11 6:00 o'clock.

12 MS. SCHELLIN: You haven't set any kind of  
13 deadline for the filing, so are we going to set any?

14 CHAIRPERSON MITTEN: That's a good point.

15 MS. SCHELLIN: Because usually the  
16 packages go out on Wednesday, which is in two days for  
17 anything the following week. So -- otherwise, you're  
18 not going to get it until the night of.

19 CHAIRPERSON MITTEN: Yes. We need it  
20 earlier than the night of, but I don't expect we're  
21 going to be getting a lot of information. So why  
22 don't we say it would have to be in by Monday, the --

23 MS. SCHELLIN: That's a holiday.

24 CHAIRPERSON MITTEN: Oh, that's a holiday.  
25 Okay. Then how about Tuesday? It would give us two

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1 days to read.

2 MS. SCHELLIN: Okay.

3 COMMISSIONER JEFFRIES: Madam Chair, if I  
4 can just say this. After this, I was looking here  
5 again. I remember seeing a reference of the upgrade to  
6 the school; the electrical upgrade. It just says --  
7 or what he submitted, unless I missed it, electrical  
8 upgrade for the school building.

9 I just think it needs to be -- even though  
10 it says it up here at the top, Harriet Tubman, but  
11 electrical upgrade to the school building is just left  
12 like that. And I'm just saying that so you can kind  
13 of understand where we need to be more specific and in  
14 tune to -- electrical upgrade for Harriet Tubman  
15 School building, even though it's up here at the top,  
16 I think it should be in that sentence if he's going to  
17 bring it back in.

18 CHAIRPERSON MITTEN: Yes. Either that or  
19 we'll have to convert it to explicit text. But it  
20 would be better if we're not supposing what they mean  
21 and they just write it out.

22 MS. SCHELLIN: Madam Chair, can we just  
23 make the filing deadline 12:00 on Tuesday. The reason  
24 is because if we -- we have to allow time for the  
25 courier to get it to others to allow you two days to

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1 review.

2 CHAIRPERSON MITTEN: That sounds okay.

3 MS. SCHELLIN: So 12:00 o'clock noon.

4 CHAIRPERSON MITTEN: 12:00 on Tuesday, the  
5 21st. Yes.

6 MS. SCHELLIN: The 21st.

7 CHAIRPERSON MITTEN: Okay. Dog Boarding,  
8 which is Case No. 05-21. Oh, Mr. Jeffries should  
9 probably come back, I think. He's not on Dog  
10 Boarding.

11 I don't know if I said it already, but  
12 this is Case No. 05-21. I would like to thank Andrea  
13 Doughty, Chris Stone, Linda Welch, and Joan Ferraris  
14 for giving us a very -- what I think is a really good  
15 refinement of the text that we had asked them to help  
16 us with at the -- during the hearing because there  
17 were issues that they were raising that were sort of  
18 things that hadn't really been, I think, fully  
19 considered.

20 So, what I'd like to do is rather than use  
21 the -- well, I guess we have to use both. We'll have  
22 to use the public hearing notice, but also I'd like to  
23 make reference to their suggested language for certain  
24 sections; which would be Section 735 and 736; which is  
25 attached to their December 5, 2005 letter to us.

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1       Because it -- I think it just kind of -- it -- it --  
2       as I said, refines some of the things that we were  
3       trying to deal with in terms of noise and odor and so  
4       on.

5               So, what I would like to suggest is let's  
6       just start with the public hearing notice and we'll  
7       kind of work back and forth.

8               So the first thing in the public hearing  
9       notice was the definition of animal boarding. We had  
10      advertised dog boarding. And I just don't know what  
11      folks feel about what's been suggested by the group  
12      that I just mentioned in their December 5th  
13      submission.

14              They basically -- there's a couple of  
15      important differences. One is that we were making a  
16      distinction between animal boarding and these other  
17      animal related uses, which were veterinary hospital,  
18      pet shot, and animal grooming or pet grooming  
19      establishment. And we're going to have another case  
20      that deals with those, right Mr. Mordfin?

21              MR. MORDFIN: Yes.

22              CHAIRPERSON MITTEN: Okay. So, they  
23      extracted that out and were dealing with that in this  
24      -- in this letter; which I'm just going to suggest we  
25      set aside the definition of animal grooming and then

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1 the section that they had proposed, we'll set that  
2 aside to have the discussion in a new case.

3 But, in defining animal boarding, they  
4 suggested that it would be any premises other than a  
5 veterinary hospital or pet shop; and then they go on  
6 to say animal. They have a separate definition for  
7 animal grooming.

8 We had originally advertised any premises  
9 other than a veterinary hospital, pet shop, or animal  
10 grooming establishment; which I think we need to  
11 retain. I think we need to retain that language.

12 Then, at the end, they had added animal  
13 boarding includes any animal grooming premises at  
14 which ten or more animals are on the premises at any  
15 time. I think the notion being that you can only  
16 groom so many animals and sort of -- it's getting into  
17 sort of more of a care taking establishment.

18 I don't know how you feel about that --  
19 about including that at this point. Or if you want to  
20 take that up again when we have the -- have we set  
21 down the other case? I can't remember.

22 MR. MORDFIN: The --

23 MS. STEINGASSER: It was set down last  
24 month.

25 MR. MORDFIN: Yes. Yes. It was set down.

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1 MS. STEINGASSER: It hasn't been scheduled  
2 yet. But it has been set down.

3 CHAIRPERSON MITTEN: Okay. So I don't  
4 know how people feel about adding that language about  
5 ten or more animals on the premises.

6 COMMISSIONER JEFFRIES: I don't -- I --  
7 I'm supportive of that. I mean, I do think that so  
8 many of these establishments, you know, taking on  
9 three or four different uses under the guise of one.  
10 So, to the extent that we can just limit the number so  
11 that that prevents them from, you know, again using it  
12 as like doggie daycare.

13 CHAIRPERSON MITTEN: Okay. What do you  
14 guys thing about that?

15 VICE-CHAIRPERSON HOOD: I'm not too  
16 familiar with that. But are we put -- are  
17 handicapping -- I guess, not holding the dog over  
18 animals. I don't know. But are we handicapping these  
19 establishments with saying that? I guess that's where  
20 I would have a pause. I don't know.

21 CHAIRPERSON MITTEN: Well, keep in mind  
22 this is proposed action. It's going to be advertised  
23 again for people to comment.

24 VICE-CHAIRPERSON HOOD: Okay.

25 CHAIRPERSON MITTEN: It's probably better

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1 to put it in, you know, to the extent we're  
2 entertaining it and see.

3 VICE-CHAIRPERSON HOOD: Put in anyway.

4 CHAIRPERSON MITTEN: Okay. So, what would  
5 happen then is, relative to what we advertise, the  
6 second sentence of what we advertised would be  
7 replaced with animal boarding includes any animal  
8 grooming premises at which ten or more animals are on  
9 the premises at any time.

10 VICE-CHAIRPERSON HOOD: So Madam Chair,  
11 let me be sure I understand. Instead of saying dog  
12 boarding, which was advertised, we're going to look at  
13 going back and saying animal boarding?

14 CHAIRPERSON MITTEN: Right. That was one  
15 of the things that came out of the hearing was just to  
16 be more generic about it. I don't know what kind of  
17 other animals we might include, but it's probably a  
18 good idea.

19 VICE-CHAIRPERSON HOOD: That's -- that's  
20 what I'm thinking about. But anyway, we'll see the  
21 comments.

22 COMMISSIONER JEFFRIES: And I'm thinking  
23 ferrets.

24 VICE-CHAIRPERSON HOOD: You'd be  
25 surprised.

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1 CHAIRPERSON MITTEN: Yes. Those ferrets  
2 need to be combed frequently.

3 VICE-CHAIRPERSON HOOD: We can be very  
4 creative.

5 CHAIRPERSON MITTEN: Curried? What was  
6 it? Curried? Curried ferret; that's what we want.  
7 Okay. It's late. Okay. Okay. So, to the public  
8 hearing notice we had new sections. And keep in mind,  
9 we had done this -- I -- I think, was this one of our  
10 emergencies? When we put this in place, originally?  
11 I can't remember.

12 MR. MORDFIN: This was an emergency.

13 CHAIRPERSON MITTEN: It was an emergency.  
14 Okay. So, we had to advertise new Section 721.7,  
15 721.8, and 721.9. And 721.9 had been included because  
16 it was an emergency and we wanted to accommodate  
17 anybody who was sort of caught in the in betwixt or  
18 between.

19 Now 721.9 is basically moot. So I would  
20 move -- I would suggest that we just delete that from  
21 what we would approve tonight.

22 Then, as it relates to Section 735, I  
23 would just adopt in total what the group, in their  
24 December 5th letter, had suggested by way of every --  
25 every section in 735. I just think -- I think it's

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1 well written and it captures what we were going for.

2 COMMISSIONER JEFFRIES: And I -- and I  
3 think they -- they know.

4 CHAIRPERSON MITTEN: They know. They  
5 know.

6 COMMISSIONER JEFFRIES: They clearly  
7 understand those guys.

8 CHAIRPERSON MITTEN: Yes.

9 COMMISSIONER JEFFRIES: Yes. I would  
10 agree.

11 CHAIRPERSON MITTEN: Okay. Any -- okay.  
12 Then to Section 736. There -- there were just a  
13 couple of things that -- and they -- they trained me  
14 to -- to pick up on this.

15 In 736. -- I would adopt everything that  
16 they have except 736.4. At the end, I would say --  
17 instead of dogs, I would say animals. And then in  
18 736.5, there's the two places where it says dogs. I  
19 would say animals. Okay? Is that okay with  
20 everybody? Okay.

21 Then, to the public hearing notice, there  
22 was -- we were going to amend the language of 761.1,  
23 using the phrase a dog boarding use shall be  
24 prohibited and -- and instead, we should say an animal  
25 boarding use shall be prohibited, and everything else

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1 would remain as was advertised.

2 And then in -- we had also advertised,  
3 relative to the industrial zones, several new  
4 sections. And those sections can remain as they are,  
5 as they had been advertised, except that every place  
6 that it says dog, it should say animal.

7 COMMISSIONER TURNBULL: Okay.

8 CHAIRPERSON MITTEN: Now, the one  
9 outstanding issue is the request that we had received  
10 from Ms. Bisguyer, who runs Dogma; the facility over  
11 on the Hill, related to the external -- exterior yard.  
12 And she had -- she had requested -- I guess she  
13 requested being dealt with separately. And I've lost  
14 my note about -- it was basically she said that she  
15 requested either that she be grandfathered; that  
16 external yards not be prohibited; or that we basically  
17 -- she basically be given the special exception at it  
18 -- in the context of this.

19 I think, you know, we certainly have a lot  
20 of information in the record about this particular  
21 establishment. I just want to be clear, and I'm in  
22 support of whatever -- whatever would basically amount  
23 to a grandfathering.

24 I just want to make it clear that we only  
25 have the authority to grandfather what's in -- what's

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1 on the private property. And I -- I don't what to --  
2 I don't want to suggest that I understand the extent  
3 to which this might -- the yard itself might be in  
4 public space, and I don't want to -- oh, here's my  
5 note. And I don't want to make -- I don't want to  
6 mislead anybody into thinking we're grandfathering  
7 something that we don't have jurisdiction over.

8 So, I don't know exactly how to phrase the  
9 -- the specific exception that we would -- or the  
10 grandfathering provision that we would craft for this  
11 establishment. But, I don't know. Can you help me  
12 with that, Mr. Rittig? Or can that be done after the  
13 fact, if I just say it?

14 MR. RITTIG: I don't have any particular  
15 language in mind. I'll just have to write a proposal  
16 in the Notice of Proposed Rule Making and then you'll  
17 have an opportunity to comment then.

18 CHAIRPERSON MITTEN: Okay.

19 MR. RITTIG: I really just -- I can't  
20 articulate it right now.

21 CHAIRPERSON MITTEN: Okay. But you -- but  
22 you understand what we're driving at?

23 MR. RITTIG: I understand the consequence.

24 CHAIRPERSON MITTEN: Okay. So then I --  
25 I -- so, I would move approval of the text amendments

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1 as we -- as we had sort of amended them on the fly  
2 here, with the good language that's been proposed by  
3 the group that -- in their December 5th letter and our  
4 further amendments. And that would include a grant,  
5 grandfathering the existing exterior yard for Dogma,  
6 as it exists on private property.

7 COMMISSIONER JEFFRIES: Second.

8 COMMISSIONER TURNBULL: Are you looking  
9 for a survey that -- I mean, we have a survey, but it  
10 doesn't really show the building and the yards and the  
11 set back. Are you looking for more definition on --

12 CHAIRPERSON MITTEN: Not anymore. I mean,  
13 I tried. I tried really hard to get something and so  
14 I'm just -- I'm just trying to articulate now that our  
15 ability to grandfather that use only applies to  
16 private property; not public space. If, in fact, some  
17 of it is in public space, which I think it may be.

18 COMMISSIONER TURNBULL: Oh, okay. Which  
19 we cannot address.

20 CHAIRPERSON MITTEN: Correct. We don't  
21 have jurisdiction over it.

22 COMMISSIONER TURNBULL: Okay.

23 CHAIRPERSON MITTEN: Okay. So we have a  
24 motion and a second to approve Case No. 05-21. Is  
25 there any further discussion? All those in favor,

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1 please say aye.

2 ALL: Aye.

3 CHAIRPERSON MITTEN: Ms. Schellin, I'm  
4 pretty sure we have none opposed.

5 MS. SCHELLIN: Right. Staff will record  
6 the vote four to zero to one to approve Case No. 05-  
7 21, as amended for proposed action; Commissioner  
8 Mitten moving; Commissioner Jeffries seconding;  
9 Commissioners Hood and Turnbull in favor; Commissioner  
10 Parsons not voting, having not participated.

11 CHAIRPERSON MITTEN: Thank you. Now, if  
12 someone could go get Mr. Parsons. I think we're ready  
13 to bring him back.

14 Okay. The last case for proposed action  
15 carried over from I think it was a special public  
16 meeting that we had; this is Case No. 05-24. This is  
17 the Eastgate Family Housing PUD. And we have a  
18 submission that addresses the concerns that we had  
19 raised about phasing; about the completion of the  
20 urban tree park. We certainly got a submission about  
21 fences and various other things.

22 Does anyone have any comments on the  
23 additional submissions? Mr. Jeffries.

24 COMMISSIONER JEFFRIES: Sometimes, be  
25 careful what you wish for or what you ask for. And I

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1 -- you know, my assumption is that, you know, the  
2 Applicant submitted all these -- these wood stockade  
3 fences just to let us -- just to scare us to death.  
4 And it worked.

5           However, the six foot high privacy fence  
6 -- it still leaves something to be desired. You know,  
7 I just -- I'm just having some difficulty with -- with  
8 -- with, you know, how people will use the space in  
9 between. And, you know, I'm just not clear as to  
10 really how it works. I mean, it -- it seems like a  
11 green, like a -- and, you know, I'm just not certain  
12 about how this works.

13           I am appreciative. I will say this though  
14 that, in terms of their submission, that they gave us  
15 a date of delivery for their urban park. They -- and  
16 -- and I appreciate that; which they say will be  
17 completed August 2008. But I'm just at a loss as to,  
18 you know, how -- how this -- this area between these  
19 building, how it operates.

20           Perhaps --

21           CHAIRPERSON MITTEN: Well, I will -- I  
22 actually wanted to ask the Office of Planning some  
23 questions. Because we have a whole bunch of different  
24 versions of what the fences could look like. Do you  
25 happen to know, is the Applicant asking for

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1 flexibility to do any one of -- any one of these  
2 combinations of four foot high fences; three rail  
3 fences; board on board fences.

4 MS. BROWN-ROBERTS: It was my  
5 understanding -- this is Maxine Brown-Roberts from the  
6 Office of Planning. It was my understanding from the  
7 Applicant that these were just samples of what is  
8 possible. But they were leaning towards this -- the  
9 last version that you got with the six foot stockade  
10 fence, and then if property owners -- if home owners  
11 wanted to add the fencing like this out there, then  
12 they had that option.

13 COMMISSIONER JEFFRIES: Okay. But what --  
14 I'm sorry. So, what will be governing sort of how  
15 this is -- I guess there'll be an association that  
16 will say you can only plant, you know, shrubberies so  
17 high or you can only put this kind of tree in this  
18 location. I mean, all of that's going to be  
19 delineated? I mean, because this is a -- a wide open  
20 space. And, by the way, what's the dimension between  
21 these buildings? What's the -- do we know what the --

22 MS. BROWN-ROBERTS: No. I haven't been  
23 given that information.

24 COMMISSIONER JEFFRIES: It looks like it  
25 could be -- so, anyway, but my question really goes

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1 back to, you know, this is a lot of green space. I  
2 mean, can some people put a fence up and then other  
3 ones won't put a fence up? Do some people --

4 MS. BROWN-ROBERTS: I think --

5 COMMISSIONER JEFFRIES: So, this could be  
6 a very sort of helter skelter haphazard situation.  
7 Unless, of course, it's governed that there is --  
8 there is documents, I assume, that will -- will really  
9 talk about how one could go forward and -- and -- and,  
10 you know, landscape or put in paving or something.

11 It just seems like it needs to have much  
12 more of a unifying theme running throughout this that  
13 brings the scale down a bit. I mean, you know, and  
14 again, I know it's an illustration and it's -- it's  
15 sort of, you know, it's just for informational  
16 purposes and it's not sort of real. But it does  
17 really, you know, make me pause a little bit. And  
18 it's unfortunate because I think, in many ways, the  
19 project -- I mean, obviously, it's a great project in  
20 terms of what it's -- it's -- it's doing. But, in  
21 terms of, you know, housing and so forth, but I'm --  
22 I'm just, you know, again I'd like to hear what my  
23 fellow Commissioners have to say.

24 COMMISSIONER PARSONS: Well, I -- I think  
25 the only thing that makes sense here to me is the

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1 privacy fence. The six foot high privacy fence that's  
2 been extended off the back of the buildings; which, to  
3 me in this kind of environment, is kind of essential,  
4 just for peace of mind and living with your neighbors.

5 The -- the other -- of course, computers  
6 are great until they try to do something like this.  
7 And it looks like, you know, the cattle yards of  
8 Chicago used to look.

9 COMMISSIONER JEFFRIES: Woah, woah, woah.  
10 Be careful.

11 COMMISSIONER PARSONS: I'm sorry. I would  
12 hope that these spaces will be defined by landscaping,  
13 by the owners; modest as it may be. That they will  
14 stake out their corners and add forsythia and other  
15 things, rather than this -- this kind of device.

16 So, that's where I would come down. And  
17 I didn't get a sketch. Everybody else did. I feel  
18 discriminated against.

19 CHAIRPERSON MITTEN: Here.

20 COMMISSIONER PARSONS: Called six foot  
21 high privacy fence; which seemed to be in a -- came  
22 out of a different printer. I guess you have that.  
23 But that seemed to make more sense to me than any of  
24 the others. And -- and -- it's -- it's shown as board  
25 on board. And I guess I won't fight whether it's

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1 stockade or board on board. But it's a -- it's a  
2 different fence than we asked for. But potentially,  
3 board on board is a better companion to this  
4 architecture, anyway.

5 CHAIRPERSON MITTEN: I would -- oh, did  
6 you want to say something?

7 MS. BROWN-ROBERTS: I was just going to  
8 say that it still doesn't address if a property owner  
9 wants to extend the fencing all the way to the -- to  
10 the walkway.

11 COMMISSIONER PARSONS: And get an  
12 appearance like this, I'm holding up the six foot high  
13 board on board fence.

14 CHAIRPERSON MITTEN: Right.

15 MS. BROWN-ROBERTS: Would we want to then  
16 include --

17 COMMISSIONER PARSONS: No. I'm not --

18 MS. BROWN-ROBERTS: -- the fencing at all?

19 COMMISSIONER PARSONS: -- I'm trying to  
20 discourage that.

21 CHAIRPERSON MITTEN: Yes. I -- I have to  
22 side with Mr. Parsons on this one. I think the one  
23 that shows that there's a uniform kind of fence that  
24 goes back just, I don't know what, ten feet or  
25 something and ends, and that's it. Because, unless --

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1 I don't like the -- I don't like the uniform options  
2 that look like, you know, everybody's been -- yard has  
3 been combined. I don't like that. And then the  
4 thought of having some one way and some another way is  
5 even worse.

6 So, I mean, I -- the -- the option with  
7 the six foot high privacy fence that extends back only  
8 about ten feet on everyone's property is -- is what I  
9 would support. And that no other fencing be  
10 permitted.

11 COMMISSIONER PARSONS: That's probably  
12 sixteen. They come in eight foot lengths.

13 CHAIRPERSON MITTEN: Okay.

14 VICE-CHAIRPERSON HOOD: But I just -- my  
15 question is, is that doable? I mean, you know, if all  
16 of us had one of those houses, you wouldn't want me to  
17 come over to your yard and take something off your  
18 grill or something. Because this is so accessible.  
19 I'm just saying, people walk through your yard. I  
20 mean, come on now; let's be realistic here.

21 CHAIRPERSON MITTEN: If you wanted what  
22 was on my grill, you could just open the fence and  
23 come it.

24 VICE-CHAIRPERSON HOOD: But I'm just  
25 saying -- I mean, I understand about the six foot high

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1 and I like the uniformity. But I also associate  
2 myself with the comments of Commissioner Jeffries when  
3 he said helter skelter, somebody did in Chicago?  
4 Okay.

5 But anyway, what I'm saying is it's no  
6 uniformity and I think that the six foot high privacy  
7 fence, it looks good. But is that what really people  
8 really want. I think you're going to have people down  
9 here trying to extend the fence, basically for a  
10 privacy issue.

11 So I don't know. I mean, we have too many  
12 options in front of us. I mean, I -- I have too many  
13 options here.

14 COMMISSIONER PARSONS: If it's truly a  
15 matter of privacy, I think they could connect the  
16 sixteen foot fence along the back parallel to their  
17 property. I mean, to keep their personal belongings  
18 contained. But to extend all the way out to the  
19 walkway, I just think is -- it's just too much.

20 VICE-CHAIRPERSON HOOD: But those  
21 residents, I'm just trying to think of how people  
22 would think when they, you know, if that's their land  
23 -- is that their -- that's their land, right? Once we  
24 get this --

25 COMMISSIONER PARSONS: Yes. It's pretty

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1 simple.

2 VICE-CHAIRPERSON HOOD: Why would I -- why  
3 would I want my yard cut short at 16 feet or whatever,  
4 when I can extend and get more for the back? I mean,  
5 this is the way I think. I'm being realistic. That's  
6 the way I would see it.

7 COMMISSIONER PARSONS: No. You know -- you  
8 know what you sold me last week? You said, you know,  
9 one neighbor's going to mow them all. Remember that?

10 VICE-CHAIRPERSON HOOD: Yes. I did tell  
11 you that last week. But that doesn't happen all the  
12 time.

13 COMMISSIONER PARSONS: I bought that  
14 argument.

15 VICE-CHAIRPERSON HOOD: That doesn't  
16 happen all the time. I'm -- I'm not --

17 COMMISSIONER PARSONS: So I thought you  
18 were for an open landscape here.

19 VICE-CHAIRPERSON HOOD: Leave it open so  
20 somebody can come by and mow the whole thing? Okay.  
21 Well, I don't know. I'm just throwing it out. Maybe  
22 we have too many options here. I don't know.

23 This looks good. I think this looks good.  
24 But in reality, I don't think it will last.

25 COMMISSIONER PARSONS: Well I think the

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1       only result could be a connection right across the  
2       back of there connecting those fences. If they wanted  
3       to store bicycles for fear they were going to be  
4       stolen or something.

5                   COMMISSIONER JEFFRIES:    My concern is  
6       around just the uniformity of the overall area. I  
7       mean, in terms of making certain that there's -- and  
8       I'm hoping that the Applicant can set forth at some  
9       time sort of, you know, this will be what will be  
10      allowed within this green space. These are the things  
11      that will make up this green area.

12                   Because it just seems rather long and --  
13      and vacuous. And I do realize it's computer generated  
14      and so forth. Again, I was hoping that we could get  
15      a couple of more landscaping; some paving or something  
16      that sort of breaks this space down somewhat and still  
17      sort of creates some privacy here. And whether these  
18      -- these little fins that come out. And I don't know  
19      if I should call them fins.

20                   But I -- I -- I'm just concerned about  
21      really understanding before we move forward with this  
22      particular project, you know, how these open green  
23      spaces will be delineated; how they will be operated.

24      I mean how -- what will be permitted as it relates to  
25      the landscape? And I just need to get some clarity on

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1       that one.    So, maybe I've already made that clear.  
2       But I just, you know.

3                   CHAIRPERSON MITTEN:   I think where we are  
4       is, as I said at one point in the hearing; which is,  
5       any structure is -- is only what -- any structure that  
6       we've permitted is only in the context of this PUD.  
7       So that's where we got all the talk about the fencing.

8                   Now we've seen what it looks like or could  
9       look like, and I, for one, don't like what it could  
10      look like.    So I -- I'm inclined -- not inclined to  
11      allow any kind of fencing apart from the six foot high  
12      privacy fence, if extends back 16 feet.

13                  And beyond that, I mean, you can have your  
14      gas grill and you can have your whatever.    But, you  
15      know, they're not going to be building little sheds;  
16      little -- you know, they're not going to be able to  
17      build a shed to put the bicycles in or the lawn mower.  
18      That's not going to be permitted.

19                  COMMISSIONER   JEFFRIES:       Office   of  
20      Planning, can you speak a little bit on -- on just  
21      this space?   I mean, what are your thoughts in terms  
22      of how this could be, you know, handled?   I mean, is  
23      it -- is it acceptable?   I mean --

24                  MS. BROWN-ROBERTS:   I have a concern with  
25      Ms. Mitten's proposal.   I think it looks good.   But I

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1 -- I think that people are going to be inclined, just  
2 from my experience, that they're going to want to put  
3 up -- to fence their yard in.

4 COMMISSIONER JEFFRIES: Here we go.

5 MS. BROWN-ROBERTS: And the problem is  
6 that there will be some that is fenced and there will  
7 be some that is not. And I think that's the problem.

8 But I don't know if maybe we have -- maybe  
9 we permit a fence that is shorter than this six feet,  
10 if that will help.

11 MS. STEINGASSER: You know, I guess I  
12 would back up Maxine on that. If -- I think the issue  
13 of privacy and security of property is very valid out  
14 here; and especially in the areas that are catering to  
15 families where you've got small children and you want  
16 to be able to let them play in a secured area and free  
17 of burger theft, which might happen from your  
18 neighbor.

19 But they -- you know, the ability to let  
20 your child in the back yard and to -- in a secured  
21 environment where he's not going to meander off  
22 aimlessly, I think, is very valid one and one that  
23 this kind of neighborhood is kind of encouraging.

24 We're trying to get family places in the  
25 city. So, if the Commission has a concern about, it

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1 seems not -- not about the fencing of the yards, but  
2 the remnant space that's left, the five foot; maybe we  
3 just set that back and say there has to be a five foot  
4 -- the fences cannot go within five feet of the  
5 property line. That'll guarantee a 15 foot, more  
6 standard -- in this case, it's pedestrian.

7 But that's a more standard alley  
8 placement. And that would allow for -- the purpose of  
9 the side alley was to allow people to get to their  
10 back yards, to bring things in and out and not have to  
11 drag stuff through the house.

12 So I -- you know, maybe -- maybe just  
13 letting the fences go within five feet of that, so  
14 we'd have more of a 15 foot space would create a more  
15 common space that we're used to seeing.

16 COMMISSIONER JEFFRIES: So, Ms.  
17 Steingasser, so are you saying -- I mean, this is like  
18 six feet, in terms of the fence that is in the -- oh,  
19 I'm sorry. Where's the other one? Anyway, in terms  
20 of privacy, it seems to me that what you're saying is  
21 that there should be a -- sort of a privacy yard of  
22 some size that people can build a fence; maybe so many  
23 -- how many feet, perhaps?

24 MS. STEINGASSER: I'd say let them go all  
25 the way to five feet from the back property line; from

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1 that -- they've got a five foot wide sidewalk, for  
2 lack of a better word --

3 COMMISSIONER JEFFRIES: Because this is  
4 all theirs.

5 MS. STEINGASSER: -- that goes up the back  
6 of that spine.

7 COMMISSIONER JEFFRIES: Right.

8 MS. STEINGASSER: If you want to create  
9 that as a more hospitable safe space, then have the  
10 fences set back from that, rather than from the back  
11 of the house.

12 COMMISSIONER JEFFRIES: Yes. See, and I'm  
13 sort of of the school that I would just like to, you  
14 know, I would agree with Vice Chair Hood that, you  
15 know, you really will have to let people, if they  
16 want, build a privacy fence and yard for their unit.  
17 I would agree with that.

18 I guess I just wouldn't take it out as far  
19 as what you're proposing. I mean, I wouldn't -- and  
20 again, I -- you know, we can't design this. I  
21 recognize it. But --

22 CHAIRPERSON MITTEN: Can I get in here?

23 COMMISSIONER JEFFRIES: I'm sorry.

24 CHAIRPERSON MITTEN: No. That's fine.

25 That's fine. Let me just see if we can get three

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1 people to care in the same way about the fences. So  
2 we have -- we have Mr. Hood and Mr. Jeffries who are  
3 wanting to allow fences. And you have -- oh, I don't  
4 know. Where are you, at this point, Mr. Parsons?

5 COMMISSIONER PARSONS: Privacy fences.

6 CHAIRPERSON MITTEN: This one?

7 COMMISSIONER PARSONS: Yes.

8 CHAIRPERSON MITTEN: Okay. So we have two  
9 votes for -- for the six foot privacy fence extending  
10 back sixteen feet. We have two votes for a greater  
11 degree of flexibility to allow fences to basically  
12 fence in your back yard so your little children don't  
13 wander off and so burger thieves have a tougher time.

14 So, where are you, Mr. Turnbull?

15 COMMISSIONER TURNBULL: Can I have a  
16 Shetland pony or a pig?

17 CHAIRPERSON MITTEN: As long as it doesn't  
18 constitute animal boarding, we would consider it.

19 COMMISSIONER TURNBULL: I mean, I like,  
20 you know, I guess I see -- I -- I see the  
21 possibilities. I see where fences are going -- where  
22 people are going to want a fence.

23 CHAIRPERSON MITTEN: Okay.

24 COMMISSIONER TURNBULL: And you don't want  
25 to have a cyclone fence go up. You don't want to have

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1 a lot of -- or you're going to have a suburban  
2 development.

3 CHAIRPERSON MITTEN: Okay.

4 COMMISSIONER TURNBULL: I mean,  
5 unfortunately, with the lower fence in this depiction,  
6 the three foot high fence is the right size.  
7 Unfortunately, this looks like Loudoun County or it's  
8 the Chicago Stock Yards.

9 CHAIRPERSON MITTEN: Yes.

10 COMMISSIONER TURNBULL: But that size  
11 scale begins to read more to lower scale and it begins  
12 to open it up more. And I don't know if it's a -- I  
13 mean, there's no gates showing on this. I mean, I'm  
14 assuming there are gates that would come in off of  
15 this if you did do it.

16 But I think you need something on a lower  
17 scale that would allow you to fence it in without  
18 being -- I mean, I think what was disturbing is some  
19 of these other renderings showed this Salvadore Dali  
20 dreamlike alley that goes down there that goes on  
21 forever. We could have nightmares. And I -- it --  
22 that's scary.

23 But what I think something lower would be  
24 is, is more in keeping with that residential quality.

25 CHAIRPERSON MITTEN: Okay.

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1 COMMISSIONER TURNBULL: Okay.

2 CHAIRPERSON MITTEN: Okay. Hold that  
3 thought now. Do you guys want -- you fence people, do  
4 you want -- do you want to control the kind of fence?

5 COMMISSIONER JEFFRIES: I -- I would only  
6 argue that the fence should go out, I don't know, 15-  
7 20 feet from the back of the building. And that's as  
8 far as the yard can go. And then the rest of this, I  
9 mean, it -- you know, there could be something that  
10 talks about some sort of, you know, landscaping or  
11 something that can go, that somehow deals with this --  
12 this middle spine. I mean that's --

13 CHAIRPERSON MITTEN: Okay. I think -- I  
14 think you're getting a little tiny bit micromanaging.

15 COMMISSIONER JEFFRIES: I know, I am.

16 CHAIRPERSON MITTEN: How about just  
17 controlling the type of fence? Because Mr. Turnbull  
18 was suggesting this lower kind of fence was probably  
19 a little bit -- had a different feel than having a  
20 tall fence. Can we just agree on the kind of fence?

21 COMMISSIONER JEFFRIES: I mean, I -- I'm  
22 fine with the six foot.

23 CHAIRPERSON MITTEN: You want six foot,  
24 but Mr. Turnbull, you're third vote over here, was  
25 wanting a lower fence, like a four foot high.

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1 COMMISSIONER HOOD: I would agree we need  
2 to stay with the six, and I'll tell you why. At three  
3 feet, we might as well go back to what Mr. Parsons and  
4 you have on. And that's just my opinion, Mr.  
5 Turnbull.

6 COMMISSIONER TURNBULL: Yes.

7 CHAIRPERSON MITTEN: Don't alienate your  
8 third vote, there.

9 COMMISSIONER HOOD: Well, he's not on yet.  
10 He's -- he's -- we need three more feet. So anyway, I  
11 think that -- but I think that we're -- it's going  
12 back to this privacy issue and we're not getting that  
13 with the four feet or three feet.

14 COMMISSIONER JEFFRIES: Commissioner  
15 Turnbull, I mean, just -- just imagine how you would  
16 live. I mean, you know, I mean, just you coming out  
17 your back door and, I mean, you know, well, you know,  
18 you might not live like this.

19 I mean, I'm in a row house and so,  
20 clearly, you know, it would be a problem, you know,  
21 for me to come out of my house and then I have a three  
22 foot fence here. I mean, what's -- all that's doing  
23 is just showing that, you know, I'm here and you're  
24 there, but I've got to see you.

25 COMMISSIONER TURNBULL: I know, but the

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1 problem is you don't want to see me? You don't want  
2 to see me? Boy, you're a hostile neighbor.

3 COMMISSIONER JEFFRIES: Don't take it  
4 personally. I'm just saying that people will really  
5 obviously, with something this dense, and everyone's  
6 just -- it's a fairly dense project. I mean, they're  
7 going to want some -- some privacy. And I think six  
8 foot does it. I think three feet is -- is not really  
9 given them that.

10 COMMISSIONER TURNBULL: Well, I feel  
11 insulted. I think I look pretty good in my shorts in  
12 the summer. I don't know. I think I -- I try to keep  
13 --

14 CHAIRPERSON MITTEN: Come on. We've got to  
15 get some closure on this.

16 COMMISSIONER TURNBULL: I guess -- but  
17 you're talking about a higher fence, just between the  
18 units and not at the end. Are you talking six foot  
19 all the way around?

20 CHAIRPERSON MITTEN: No. He's talking all  
21 the way around.

22 COMMISSIONER JEFFRIES: I'm -- I was  
23 talking all around, but I might be able to -- it would  
24 seem like it should be all around. I'd probably say  
25 all around.

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1 COMMISSIONER TURNBULL: Make a motion.

2 CHAIRPERSON MITTEN: Okay. Make a motion.

3 One of the fence people needs to make a motion.

4 COMMISSIONER JEFFRIES: Okay. I make a  
5 motion -- woah, woah, wait. Where's the case here?  
6 05-24, is it?

7 CHAIRPERSON MITTEN: Yes.

8 COMMISSIONER JEFFRIES: I make a motion  
9 that we approve Case No. 05-24.

10 CHAIRPERSON MITTEN: And to allow?

11 COMMISSIONER JEFFRIES: Oh, right. And to  
12 -- wait a minute, where's -- See, this is the first  
13 time I'm making a motion here, so you have to --

14 CHAIRPERSON MITTEN: Would you like me to  
15 --

16 COMMISSIONER TURNBULL: Make a motion  
17 about the fence. The staff will take care of the  
18 rest.

19 COMMISSIONER JEFFRIES: Oh, okay. I'm  
20 making a motion about the fence?

21 CHAIRPERSON MITTEN: Yes.

22 COMMISSIONER JEFFRIES: Oh.

23 CHAIRPERSON MITTEN: Let me say that Mr.  
24 Jeffries would like to move that we approve Case No.  
25 04-24, and among other things, we allow a wood fence

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1 of the type depicted on the Applicant's submission  
2 that would include a six foot high privacy fence  
3 extending around the perimeter of the rear yard, for  
4 any given property if -- if an owner so chose; that we  
5 would eliminate the Condition No. 9 that requires  
6 phasing of the project, based on the Applicant's  
7 February 10th letter to the Commission, that it will  
8 be made clear in Condition No. 8 that the urban tree  
9 park will be delivered concurrently with the  
10 completion of the balance of the project; and that we  
11 would incorporate the new Exhibit A to show the  
12 surface of the walking trail.

13 VICE-CHAIRPERSON HOOD: I'll second that.

14 COMMISSIONER JEFFRIES: Madam Chair, I  
15 would like to set this back a bit. I'm not in favor  
16 of a six foot high fence being built around the entire  
17 fee simple of each town home.

18 CHAIRPERSON MITTEN: Okay.

19 COMMISSIONER JEFFRIES: I guess what I'm  
20 saying is that I wanted a certain -- probably maybe  
21 half of what's the rear yard to be able to be enclosed  
22 with a six foot fence.

23 CHAIRPERSON MITTEN: You're going to have  
24 to -- you're going to have to stand off the five foot  
25 access easement or something. Because saying half way

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1 back is not going work.

2 COMMISSIONER JEFFRIES: Okay.

3 CHAIRPERSON MITTEN: You could say within  
4 X feet of the five foot access easement.

5 COMMISSIONER JEFFRIES: Within ten feet.

6 CHAIRPERSON MITTEN: Within ten feet?  
7 Okay. So that someone could -- could extend a -- a  
8 six foot privacy fence around the perimeter of their  
9 yard, but to -- but not to within ten feet of the rear  
10 access easement. Does that sound like what you wanted  
11 to say?

12 COMMISSIONER JEFFRIES: Yes. I mean, Vice  
13 Chair, are you fine with that?

14 VICE-CHAIRPERSON HOOD: Not actually, but  
15 let me just ask. Okay, the pathway's already what,  
16 five feet?

17 CHAIRPERSON MITTEN: Five feet.

18 VICE-CHAIRPERSON HOOD: Right. So that  
19 ten feet is added on to that, or the total sum of that  
20 is ten feet?

21 COMMISSIONER JEFFRIES: This -- this would  
22 be moved back ten feet.

23 CHAIRPERSON MITTEN: So the total, if they  
24 --

25 VICE-CHAIRPERSON HOOD: So the total is

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1 ten feet. So it's just an additional five feet on one  
2 side?

3 CHAIRPERSON MITTEN: No. It would be ten  
4 feet on one side; five feet for the access easement  
5 and ten feet on the other side.

6 VICE-CHAIRPERSON HOOD: So it's a total of  
7 15 feet?

8 COMMISSIONER PARSONS: 25.

9 CHAIRPERSON MITTEN: It would be 25. If  
10 two people put fences up.

11 COMMISSIONER JEFFRIES: So -- so what I'm  
12 saying, Vice Chair, is that I'm just -- I'm basically  
13 saying that this -- this bowling alley effect, I'm  
14 trying to get away from. And I'm trying to say that  
15 we can give each of the tenants a privacy yard --  
16 decent sized yard, but give a little bit more space in  
17 the middle where, off of this five foot, you can have  
18 some landscaping and so forth.

19 VICE-CHAIRPERSON HOOD: Okay. I can go  
20 with that. Now that you've described it, Mr. Parsons  
21 can come by and cut the grass or anything that's back  
22 there, I can go with that.

23 CHAIRPERSON MITTEN: Okay. So is that the  
24 motion you intended to make?

25 COMMISSIONER JEFFRIES: Yes. That's the

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1 motion I intended to make.

2 CHAIRPERSON MITTEN: Good, because I  
3 didn't want to make that for you. Okay so Mr.  
4 Jeffries?

5 COMMISSIONER JEFFRIES: I'll second that.

6 CHAIRPERSON MITTEN: Okay. And you've got  
7 Mr. Hood. Okay. I'm not going to vote against the  
8 motion. I just wanted to be, you know -- I just  
9 wanted maintain my lack of favor for the whole fence  
10 scheme. But we'll get past it. Is there any further  
11 discussion?

12 All those in favor, please say aye.

13 ALL: Aye.

14 CHAIRPERSON MITTEN: Those opposed, please  
15 say no.

16 COMMISSIONER PARSONS: No.

17 CHAIRPERSON MITTEN: Ms. Schellin.

18 MS. SCHELLIN: Staff will record the vote  
19 four to one to zero to approve Zoning Commission Case  
20 No. 05-24, as stated; Commissioner Jeffries moving;  
21 Commissioner Hood seconding; Commissioners Mitten and  
22 Turnbull in favor; Commissioner Parsons against.

23 CHAIRPERSON MITTEN: Thank you. Okay,  
24 we've wrestled that to the ground. Now we're ready  
25 for final action.

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1           The first case is 05-12, which is  
2           Hostelling International USA. If you'll remember, we  
3           had a text amendment that would basically allow them  
4           to expand in their current site downtown and not have  
5           to meet the requirements of the housing priority area  
6           to provide housing. And we had a proposed order.

7           And I just had some editorial changes to  
8           suggest, so I would move approval of the order for  
9           Case No. 05-12.

10           VICE-CHAIRPERSON HOOD: Second.

11           COMMISSIONER JEFFRIES: Madam Chair, I'm  
12           not participating in this case.

13           CHAIRPERSON MITTEN: Okay. Thank you. Is  
14           there any discussion? All those in favor, please say  
15           aye.

16           ALL: Aye.

17           CHAIRPERSON MITTEN: Those opposed, please  
18           say no. Ms. Schellin.

19           MS. SCHELLIN: Staff will record the vote  
20           as four to zero to one to approve Zoning Commission  
21           Case No. 05-12; Commissioner Mitten moving;  
22           Commissioner Hood seconding; Commissioners Parsons and  
23           Turnbull in favor; Commissioner --

24           CHAIRPERSON MITTEN: I'm going to have to  
25           -- I'm just going to have to interrupt here. If -- if

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1 the draft order's right, Mr. Hildebrand voted on that.

2 MS. SCHELLIN: Okay. So that's what we  
3 were trying to figure out. Okay.

4 CHAIRPERSON MITTEN: Yes.

5 MS. SCHELLIN: So then we would record the  
6 vote three to zero to two to approve Zoning Commission  
7 Case No. 05-12; Commissioner Mitten moving;  
8 Commissioner Hood seconding; Commissioner Parsons in  
9 favor; Commissioner Jeffries not voting, having not  
10 participated; Commissioner Hildebrand not present, not  
11 voting.

12 CHAIRPERSON MITTEN: Thank you. Okay.  
13 Next is Case No. 03-12A/03-13A; which is the  
14 Capper/Carrollsborg Hope Six second stage PUD, and  
15 then we had some modifications to the consolidated PUD  
16 and the preliminary PUD. There's a whole lot in  
17 there.

18 We had the proposed order on that. I think  
19 we just need to clarify one or two things. One is, on  
20 Condition No. 7 of page 16. It's about two thirds of  
21 the way down. It says applications for final approval  
22 of phases two through four of the development must be  
23 filed by October 2008. We need to specify whether  
24 that's October 1st or 21st or 31st. I would say 31st  
25 if no one object.

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1           And, Mr. Rittig, I don't remember ever  
2           seeing a condition like this before. But I don't  
3           remember us discussing it either. Which is on the  
4           following page, page 17. The Condition No. 15, an  
5           individual applicant shall be responsible for carrying  
6           out those conditions of this order that are applicable  
7           to each specific property and shall not be responsible  
8           for the obligations or requirements of the other  
9           applicants.

10           I don't know that -- well, first of all,  
11           I've never -- I don't recall seeing that. But I don't  
12           know that we have delineated sufficiently who's  
13           responsible for what to approve that.

14           MS. NAGELHOUT: Actually, this one is  
15           mine.

16           CHAIRPERSON MITTEN: Oh, sorry.

17           MS. NAGELHOUT: Yes. I don't -- I don't  
18           recall seeing a condition like that either. It's a  
19           phrase we see often in -- in covenants. And I -- I'm  
20           -- I didn't see any discussion in the transcript about  
21           it either. But I know there are multiple applicants  
22           here and so I thought they were -- they had worked out  
23           among themselves who was doing what.

24           CHAIRPERSON MITTEN: I guess I'm just  
25           thinking about enforcement. If they all start -- if

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1 something doesn't happen and they all start pointing  
2 at eachother and we -- and the Zoning Administrator  
3 can't pin down who's responsible for what; then that  
4 would be problematic.

5 MS. NAGELHOUT: Yes. If it's not spelled  
6 out, that would be problematic. Who's doing what?  
7 The only thing I can think of off the top of my head  
8 is about the Van Ness Elementary School. They made  
9 clear that that was not part of -- or whatever's  
10 happening at Van Ness was not going to be done by the  
11 parties in this case.

12 CHAIRPERSON MITTEN: Right. But I think  
13 -- I think -- I just think we need to have that  
14 clarified before we -- this is final action. I think  
15 we need to understand that better. If that's the only  
16 thing, then that's not -- then, we can -- we can just  
17 make that clear. But there were --

18 MS. NAGELHOUT: I don't think that refers  
19 to Van Ness. I think that was -- that was something.  
20 I think it's this order that says clearly that these  
21 parties are not doing the Van Ness project and that  
22 that would be going on its own schedule.

23 CHAIRPERSON MITTEN: Right.

24 MS. NAGELHOUT: So I don't know what  
25 specifically that refers to.

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1 CHAIRPERSON MITTEN: Well, I mean, just as  
2 a for instance, it says -- well the two applicants; we  
3 have Capper/Carrollsborg Venture LLC and the Housing  
4 Authority.

5 MS. NAGELHOUT: And Capper/Carrollsborg,  
6 I think, is itself two separate --

7 CHAIRPERSON MITTEN: Correct. So I think  
8 we just need to get that clarified before we can put  
9 that particular condition in place. We can do -- I  
10 guess we can do one of two things; I'll let you  
11 recommend which one would be easier.

12 One is we can take it out and then hear  
13 from them and then, I guess amend it. Or, we can hold  
14 off and fix it before we vote on it.

15 MS. NAGELHOUT: I think you could do it  
16 either way. If they -- if they felt strongly about  
17 it, they should have spelled it out for you, other  
18 than putting it in the draft order.

19 CHAIRPERSON MITTEN: Okay. Then we'll  
20 take it out and they can come back if they want. So  
21 I would -- I would delete Condition No. 15. And I  
22 would move approval of the order in Case No. 03-  
23 12A/03-13A, with Condition 15 removed.

24 COMMISSIONER JEFFRIES: Second.

25 CHAIRPERSON MITTEN: Thank you. Any

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1 discussion?

2 COMMISSIONER PARSONS: Just to let you  
3 know, I didn't participate in the hearing, so I won't  
4 be in on this.

5 CHAIRPERSON MITTEN: Oh, okay. Anyone  
6 else? All those in favor, please say aye.

7 ALL: Aye.

8 CHAIRPERSON MITTEN: Those opposed, please  
9 say no. Ms. Schellin.

10 MS. SCHELLIN: Staff will record the vote  
11 four to zero to one to approve final action in Case  
12 No. 03-12A/03-13A; Commissioner Mitten moving;  
13 Commissioner Jeffries seconding; Commissioners  
14 Turnbull and Hood in favor; Commissioner Parsons not  
15 voting having not participated.

16 CHAIRPERSON MITTEN: Thank you. We have  
17 a couple pieces of correspondence and I just wanted to  
18 say a word or two about one or two of them.

19 First is, we have a piece of  
20 correspondence from ANC 2A that attaches a resolution.  
21 And one of the things that is in the resolution is an  
22 assertion that -- that the George Washington  
23 University is not in compliance with their campus plan  
24 as it relates to student head count. And I was  
25 wondering, Ms. Schellin, has the Office of Zoning

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1 received a request for like -- I don't know exactly  
2 how it comes through, but for compliance  
3 investigation?

4 MS. SCHELLIN: We have not received any  
5 complaint for non-compliance on this issue.

6 CHAIRPERSON MITTEN: Okay.

7 MS. MCCARTHY: But Madam Chair, we  
8 received a copy of a letter that had been sent to the  
9 Mayor today, asking -- asking why a previous letter to  
10 the Mayor hadn't been responded to on this subject. So  
11 we sent back and indicated that it was not the Office  
12 of Planning's job to do enforcement and that they  
13 ought to contact either the Office of Zoning  
14 Enforcement Officer or the Department of Consumer and  
15 Regulatory Affairs Zoning Administrator.

16 CHAIRPERSON MITTEN: Okay.

17 MS. MCCARTHY: So Ms. Schellin may be  
18 getting a request soon.

19 CHAIRPERSON MITTEN: Okay. Then we have  
20 a letter from the West End Citizens' Association  
21 regarding GW's intent to file a PUD and map amendment.  
22 And they are asking us to return that filing, which is  
23 not our prerogative to do. I just want to say that.

24 And then we also have correspondence about  
25 a text amendment to grant flexibility to relocate some

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1 of the clubs that are on or near the proposed baseball  
2 site. And, at the moment, we don't have an Applicant,  
3 so we'll look forward to having a submission if  
4 someone cares to make one in the future.

5 We need to adjourn now, for just a couple  
6 of minutes. And anyone who would like to stay. And  
7 we'll be back in just a few minutes. Thank you.

8 (Whereupon, off the record from 9:41 p.m.  
9 until 9:53 p.m.)

10 CHAIRPERSON MITTEN: Okay. We're back.  
11 So we have one final item of business, which is the  
12 election of officers. And --

13 VICE-CHAIRPERSON HOOD: Madam Chair, I  
14 would move that, unless anybody else want's to step  
15 up, I would move that we keep it in the order in which  
16 we've had it this past year.

17 CHAIRPERSON MITTEN: I can't give this job  
18 away.

19 COMMISSIONER JEFFRIES: I second.

20 CHAIRPERSON MITTEN: Okay. All those in  
21 favor, please say aye.

22 ALL: Aye.

23 CHAIRPERSON MITTEN: Ms. Schellin, I think  
24 it's unanimous.

25 MS. SCHELLIN: Yes. Staff will record the

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1 vote five to zero to zero to elect Chairman -- or  
2 present Chairman Mitten to continue as the Chairman  
3 for the next year; Commissioner Hood moving;  
4 Commissioner Jeffries seconding; Commissioners  
5 Parsons, Turnbull, and Mitten in favor.

6 CHAIRPERSON MITTEN: And Mr. Hood  
7 continuing as Vice-Chair.

8 MS. SCHELLIN: Exactly.

9 CHAIRPERSON MITTEN: I think we have  
10 nothing else. So we're adjourned. Thanks.

11 (Whereupon, the Public Meeting was  
12 adjourned at 9:54 p.m.)  
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